[fol. D]

JUVENILE REFERRAL REPORT

Name Gerald Francis Gault Age 15 Birth Date 1-23-49
Address #31 West Side Trailer Park Birth Place Pa.
Date 2-2-64 Charge Vio. Sect 13-663A Grand Theft
Sex M Race W Phone —
School Hill St. School Grade 8
Works —
Father Paul Gault Works New Mexico
Mother Marjorie Gault Works Baby Sitter
Guardian — Works —
Referred by Globe Police Dept.
Arresting Officer Van Buskirk & Burgin
Parents Notified by Van Buskirk Date 2-2-64 Hour 23:20
√ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

See Referral on Curtis Uptain.
Court Action Case No. 2379
Handled by Probation Officer
Placed in Detention
Released from Detention
X Petition Filed 2-7-64
X Hearing Held 2-25-64
Dismissed
Committed to State Industrial School
Committed to Good Shepherd School
X Placed on Probation 6 Months
1) Stay out of Trouble
2) Obey Mother
3) Group Sessions

[Stamp—Filed at 11:00 A. M.—Feb 26 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

[fol. E]

JUVENILE REFERRAL REPORT

Name Curtis Marion Uptain Age 11 Birth Date 11-28-52
Address 260 Mayss Birth Place Miami
Date 2-2-64 Charge Grand Theft
Sex M Race White Phone None
School Central School Grade 5th
Works
Father Arnold Uptain Works Christmas
Mother Willie Uptain Works Frontier Cafe
Guardian Works
Referred by Globe P.D.
Arresting Officer Van Buskirk & Burgin
Parents Notified by Van Buskirk Date 2-2-64 Hour 23:15
☒ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

Curtis took a wallet containing $60.00 from a purse at the Alden Theater. Purse belonged to Mary Hernandez. Curtis in company of Gerald Gault & Lasiter Uptain.

Court Action Case No. 2284
Handled by Probation Officer

X Placed in Detention 2-3-64
X Released from Detention 2-4-64
X Petition Filed 2-3-64
X Hearing Held 2-3-64
Dismissed
X Committed to State Industrial School 2-3-64
Committed to Good Shepherd School
Placed on Probation

[Stamp—Filed at 10:00 A. M.—Feb 26 1964—Arnold M. Ambos, By H.W., Deputy]

[fol. F]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 164769

[Title omitted]

PETITION IN FORM OF AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS—Filed August 3, 1964

State of Arizona,
County of Maricopa, ss.:

Marjorie Gault, being duly sworn, deposes and says: that she is the wife of Paul L. Gault and the mother of Gerald Francis Gault, a minor, of the age of fifteen years, who was born to her on January 23rd, 1949, and makes this application for a writ of *habeas corpus*.

Petitioner's said son Gerald is now being detained at the Arizona State Industrial School, having been so committed by commitment made by the Hon. Robert T. McGhee, Juvenile Judge of Gila County, on June 15, 1964, and continues so detained.

Petitioner's said son has been charged on two separate occasions by the Juvenile Judge. The facts surrounding the two happenings, so far as petitioner knows and same are pertinent are set out as follows.

First, as to the later charge, that of "Lewd phone calls," petitioner got home from work on Monday, June 8, 1964, and her son Gerald did not appear on time; he is usually prompt. She sent her older boy to the trailer of the Lewis family in the same court, assuming Gerald was with Ronnie Lewis. There the older boy learned, and so did petitioner, that about ten o'clock that morning the Sheriff's office had taken Gerald in custody. Petitioner then went to the detention home and found that her boy was there. She attended

[File endorsement omitted]

before Judge McGhee at which time Gerald denied having said anything to the woman, other than to have dialed the number and asked her if it was that number and then handing the phone to Ronnie Lewis, who had stated he was to call her to ask her to come to clean the Lewis trailer at his [fol. G] father's request. At that time Judge McGhee stated that Gerald should go back to the detention home for a few days and he would think the matter over.

On Friday afternoon about 3 p.m. Gerald appeared at the home where petitioner was working and advised that Mr. Flagg, probation officer of the court, had driven him down and left him. He did not know anything, other than he had been released.

About five o'clock that same afternoon and in the same place, Mr. Flagg came back and delivered to petitioner a sheet of paper, a copy of which is annexed to these proceedings and marked Exhibit A. This plain piece of white paper states:

> Mrs. Gault:
>
> Judge McGhee has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further hearings on Gerald's delinquency
>
> (signed) Flagg.

Petitioner assumed, in spite of the wording, "Gerald's delinquency," that the fact that he had been released was the adjudication, and that he was required to be in court, as were they, due to the fact that he might have to tell his story as to what Ronnie had done. In spite of this, petitioner continued to have second doubts and on Saturday June 13, 1964, spoke to Chief of Police Rod Weinberger, and said that perhaps the family had better get a lawyer. The Chief of Police stated that would not be necessary as Judge McGhee was giving the boy a year's probation.

On Monday, resting on that statement, petitioners and their son Gerald, attended before Judge McGhee. At that time the only other persons present were Ronnie Lewis

and his father, Mr. Flagg and Mr. Henderson, probation officers. This petitioner asked the Judge why the complainant, or victim, as alleged, Mrs. Ora Cook, was not present, to testify. Judge McGhee informed petitioner that it was not necessary for her to be there. At that hearing Gerald repeated his statement that he did not do any sug-
[fol. H] gestive or any talking to Mrs. Cook, except as above stated. The boy Ronnie Lewis did not state that Gerald had done any of the suggestive talking. Judge McGhee then ruled that Gerald should be sent to Fort Grant. Petitioner asked to kiss him goodbye, which the Judge refused, and told petitioner that she ought to be sent down to Fort Grant. Moreover, the boy had asked for his bible and some other things, and the probation officer Flagg refused permission to let him have the same.

With respect to the hearing itself, no one was sworn as a witness; no statement was made by the Judge as to the seriousness of the matter, nor that it might result in Gerald being sent to Fort Grant, and petitioner did not know that this would be so until the Judge actually said so at the close of the so-called hearing.

As to the previous charge, petitioner's son was missing after having attended a movie and petitioner had gone to search for him when he was brought home about one o'clock by Mr. Flagg, who stated that he was charged concerning the theft of a wallet and that there would have to be a hearing. Mr. Henderson conducted the hearing at which only petitioners and their son were present. Following this petitioner was informed by Mr. Flagg and her son that he had been placed on six months probation. Petitioners did not know that there could have been a hearing before the Juvenile Judge; it is presumed that Mr. Henderson acted as a referee and made a report to the Judge who ordered the probation. There is nothing in the records to indicate anything of this.

Petitioner has consulted with an attorney of the Arizona Civil Liberties Union now and believes that there is not

sufficient to show her child to be delinquent; she has not found him anything than an obedient boy who has gotten into some trouble, not of a serious enough nature for the punishment meted out to him.

Wherefore, petitioner prays a writ of habeas corpus.

Marjorie Gault

Subscribed and sworn to before me this 1st day of August, 1964.

Amelia D. Lewis, Notary Public.

My com. exp. 5/2/66.

[fol. I]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

File No. 8476

[Title omitted]

ORDER FOR HEARING APPLICATION FOR WRIT OF HABEAS CORPUS—August 3, 1964

On reading the affidavit of Paul L. Gault, one of the natural parents of Gerald Francis Gault, a minor, whereby it is alleged that the said Gerald Francis Gault is restrained of his liberty and is illegally committed to the Arizona State Industrial School at Wilcox, Arizona, and kept from his natural parents, the applicants herein; and stating of what the alleged illegality consists it is

Ordered, that the applicants appear at the hour of 2.00 o'clock P.M. on Monday, the 10th day of August, 1964, in the Court room of Division 4 Superior Court in Maricopa County, Arizona, to then and there present what they may

[File endorsement omitted]

desire concerning the issuance of this Writ; and it is further

Ordered, that the Clerk of this Court give notice to the person at the Arizona State Industrial School having the custody of the said minor of the time and place for hearing said application.

Dated, this 3d day of August, 1964.

Lorna E. Lockwood, Justice of the Supreme Court.

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

No. 164769

In the Matter of

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor,

for a Writ of Habeas Corpus.

Phoenix, Arizona

Transcript of Proceedings—August 17, 1964

Before: Honorable Fred J. Hyder, Judge, Division No. 8, Presiding Without a Jury.

APPEARANCES:

For the Petitioners, Amelia D. Lewis, Attorney at Law.

For the Respondent, Robert W. Pickrell, The Attorney General, by Philip Haggerty, Assistant Attorney General.

LaVonne Ione Marek, Court Reporter.

[fol. 2] PAUL L. GAULT, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mrs. Lewis:

Q. Would you state your full name?
A. (No response.)
Q. State your full name?
A. Paul L. Gault.
Q. Where do you live, Mr. Gault?
A. Globe Mobile Homes Trailer Court, Globe, Arizona.
Q. All right. Have you lived there at least since February of this year?
A. Yes.
Q. How long have you lived up that way?
A. I have lived in Globe since September, 1960.
Q. All right. Are you the father of Gerald Francis Gault?
A. I am.
Q. Right. In whose custody is Gerald as of this time?
A. Fort Grant Industrial School.
Q. All right. Will you tell us about when he was taken [fol. 3] from your custody?
A. Let's see—
Q. Would it have been about June, 1964?
A. It would.
Q. Was this by an act of the Juvenile Judge of the Superior Court of Gila County?
A. It was.
Q. Mr. Gault, was there a hearing on a matter before the Juvenile Judge in Gila County, concerning Gerald?
A. Yes.
Q. Did you receive any formal written notice with respect to this hearing?
A. We got a—a little notice written by Flagg, the Probation Officer.
Q. What is Mr. Flagg's first name, if you know?

A. I do not know.

Q. Is it Charles Flagg?

A. Charles, yes. Right.

Q. Thank you. Right. And when you say "we," did you personally receive it?

A. No.

Q. Do you know who did receive it?

A. My wife.

Q. It was received at your residence, you believe?

[fol. 4] A. Yes.

Q. Did you ever see that notice, did you look at it, did you read it?

A. Yes.

Q. I show you what has been marked—what has been marked Petitioner's Exhibit 1 for identification and ask you if you recognize this?

A. Yes.

Q. Is that the—the only notification of the—of a hearing that you received?

A. To the best of my knowledge, that is it, yes.

Q. When you say to the best of your knowledge, could you have received some other note?

A. No.

Q. Then this is the only notice you received?

A. Yes.

Q. This notice says, "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964, at 11:00 a.m. as the day and time for further hearings on Gerald's delinquency," all of which is typed, and then in ink it is signed, "Flagg." Is that correct?

[fol. 5] A. That's right.

OFFER IN EVIDENCE

Mrs. Lewis: Your Honor, I ask that this be marked in evidence.

The Court: Any objection to Exhibit 1 being received into evidence?

Mr. Haggerty: No objection.

The Court: Exhibit 1 may be received in evidence.

By Mrs. Lewis:

Q. Mr. Gault, did you ever see a copy of a petition with respect to a charge against Gerald, for a crime, stating that the Court may—the child may need the protection of the Court as a delinquent child?

A. No.

Q. With respect to a proceeding against Gerald in the Juvenile Court of Gila County, in February of 1964, did you ever see any notice of that proceeding?

A. No.

Mr. Haggerty: I object to that. It is immaterial to this particular action.

The Court: Is that a prior hearing to the one in question?

Mrs. Lewis: Yes, your Honor. I believe—I am not certain, because I have nothing from the records of Gila County [fol. 6] which show it, but the child, according to the records, had been placed on six months' probation in that matter in February. This matter in June may have happened because of a re—revocation of a probation of the prior matter, and that was the reason why I considered that that may be important to the case.

Mr. Haggerty: Object on the grounds that this would go into the—only to the discretion of the Court in imposing the sentence, and this would be, in this hearing, it would be improper.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Mr. Gault, have you supported your child Gerald and cared for him in your home up to the time that his custody was taken from you?

A. Yes.

Q. Do you own a home for him now in which to care for him and support him?

A. Yes.

Q. Are you prepared to care for him and support him?

A. Yes.

Q. Who else lives in the home with you?

A. Me, my wife, and my oldest—

[fol. 7] Q. What is your wife's name, please?

A. Marjorie Gault.

Q. And—

A. My oldest son, Louis.

Q. Right. Did you attend in court at any time in June of 1964, with respect to this juvenile matter involving Gerald, yes or no, did you go to court?

A. Yes.

Q. Right. And would it have been on the date of notice, Monday, June 15th, 1964, at about 11:00 a. m.?

A. Yes.

Q. Were you present during the—at that time, in court?

A. Yes.

Q. Were you in the judge's chambers?

A. Yes.

Q. Who was present?

A. There was me, my wife, Judge McGhee, Flagg and Mr. Henderson.

Q. Who was Mr. Henderson, if you know?

A. He's a probation officer. And Ronnie Lewis, my son, Gerald Gault, and Mr. Lewis.

Q. Would that have been Ronnie's father?

A. That was Ronnie's father.

[fol. 8] Q. Right. At that time, were any—was any witness sworn to testify?

Mr. Haggerty: Objection. This is going into the weight of the evidence presented in the Juvenile Court. It is not a proper subject for habeas corpus.

Mrs. Lewis: If your Honor—

The Court: Yes.

Mrs. Lewis: Whether or not there was a proper hearing held on this matter I believe goes to the jurisdiction of

whether the boy's custody was properly taken from the parents. That's the whole gist of this matter, whether or not the Court had jurisdiction, and the—our claim that there was insufficient notice, that there was actually no proper hearing held as such, that whatever hearing was held was a matter of hearsay testimony given to the judge outside of the hearing of these parties and the child in question, except for what was said beforehand.

The Court: The law provides an informal hearing does it not? Are you saying that because they are not sworn or because they didn't take a witness stand, the hearing, in fact, was not held?

Mrs. Lewis: One of the claims would be, your Honor, [fol. 9] that in a matter as serious as taking custody of a boy from parents, that the Advisory Council of Judges of the National Council on Crime and Delinquency required, and they recite cases which I can present to your Honor, in which a commitment was revoked by an appellate court for failure to swear adult witnesses who were complaining against a child for a violation of a crime.

The Court: What do you have to say, Mr. Haggerty?

Mr. Haggerty: If we wish to go into the facts of the case, the State is prepared to go ahead and present evidence concerning the child's admission as to the matters involved. I just didn't think this was part of the scope of the hearing. I thought we were confined to Judge McGhee—

The Court: Well, I thought in chambers, and it was stipulated, that the only issue before this Court is whether the Court had jurisdiction in the matter to—on the commitment of the Gault boy. Is that true?

Mrs. Lewis: Yes, your Honor.

Mr. Haggerty: That is what I understood.

The Court: Now, you are not going into matters as to [fol. 10] the weight of the evidence, as to whether or not he should or should not have been committed, are you?

Mrs. Lewis: Maybe, your Honor, but I don't think it is necessary for a—the hearing at this time. That was my

position as stated to you in chambers. I have no objection to going into a hearing on the merits of whether or not the boy should be committed.

The Court: Well, that is a matter of appeal.

Mrs. Lewis: Pardon?

The Court: That is a matter for appeal.

Mrs. Lewis: There is no appeal presently.

The Court: I mean if there was a hearing.

Mrs. Lewis: The Supreme Court indicates—does not give an appeal from juvenile matters, therefore it must be on habeas corpus.

The Court: Well, then, you are asking the Court to determine whether or not the boy should or should not have been committed, on the evidence presented. Is that your position?

Mrs. Lewis: My position, actually, intended to be that these parents were illegally denied, or the custody of this child was taken from them. Whether or not the child should again—if there was insufficient notice, if there was insuffi- [fol. 11] cient due process, using the big word because there will be several charges under that that I will be making, that there was not due process; that if there was not due process, as far as these petitioners were concerned, and the boy is released, that he would then be permitted to go before Judge McGhee, if the probation officers and Judge McGhee wished it, on account of the charges, if he was not to be—and due process be given to the parents all over again, but I am prepared to go ahead with the whole basis and dispose of it here and now, if—

The Court: Yes. But the Court isn't called upon to determine that issue.

Mrs. Lewis: But, your Honor, if—

The Court: If there was no hearing, if there was no jurisdiction—

Mrs. Lewis: That is my opinion, and that is the reason; and what makes the hearing is counsel, and witnesses, and adult witnesses sworn. Whether a child witness should be sworn certainly is not jurisdiction of the juvenile judge.

The Court: Well—but you may proceed and ask him questions, and the Court will separate the admissible from the inadmissible.

[fol. 12] Mrs. Lewis: Thank you, Judge.

Q. At the time of this hearing about which we were talking, and which we say occurred on Monday, June 15th, in Judge McGhee's chambers in Globe, were there any persons—any adult persons sworn as witnesses?

A. No.

Q. Did any adult persons testify?

A. No.

Q. Did any adult persons talk to the Judge in your presence about Gerald?

A. No, with the exceptions of Mr. Flagg.

Q. The probation officer?

A. Yes.

Q. Right. Was Mr. Flagg sworn, was he sworn to tell the truth under oath?

A. There was no clerk of court for the—there, or anything, to swear—

The Court: Well, just answer the question.

The Witness: No.

By Mrs. Lewis:

Q. At any time prior to this hearing, or at the time of the hearing, did anyone warn you of the possible consequences, that is, that the boy might be taken from your custody and might be committed to the Industrial School?

[fol. 13] A. Not from court. Hearsay. We heard by the police and that that he could be put down—taken and put down in Fort Grant.

Q. Now, was this prior to the 15th of June, or was this after the hearing?

A. No, it was prior to the 15th of June.

Q. At any time prior to the 15th of June or at the start of the hearing, did the Judge or anyone else tell you that you had a right to engage a lawyer?

A. No.

Q. Did anyone tell you that you had the right to call witnesses?

A. No.

Q. Did anyone tell you that you had a right to subpoena witnesses?

A. No.

Q. Did you know that you had the right to subpoena witnesses?

A. Yes.

Q. Did anyone at that hearing make a statement that Gerald had committed a crime?

A. No.

Mr. Haggerty: I will object to this as calling for a conclusion. He is a layman and might not know what constitutes a crime.

[fol. 14] The Court: Objection sustained.

By Mrs. Lewis:

Q. Were you ever advised that your child was accused of a crime?

A. No.

Q. Did you know what Gerald was there for?

A. For making a phone call. That's all that was told me, and that was hearsay.

Q. Did you have any discussion with your son about it, prior to the hearing?

A. Yes.

Q. Did the boy understand that he was there for his making a phone call?

Mr. Haggerty: Objection. That is hearsay. The boy is here, he may testify.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Aside from what the boy told you, did you—did you have any other way of knowing what the boy was accused of?

A. No.

Q. Right.

Your witness.

[fol. 15] Cross examination.

By Mr. Haggerty:

Q. You state you were living—are living now at the Globe Mobile Homes?

A. Right.

Q. Were you living there on June 9th of this year?

A. Yes.

Q. Were you aware of the fact that your son was arrested on—on or about that date?

A. No.

Q. Do you know if your wife is aware of it?

A. On June the 9th—June the 8th, up until the 12th, I was in—working in Grand Canyon.

Q. So, you were out of town during that period?

A. Yes.

Q. Do you know Mr. Flagg?

A. Yes.

Q. You know of his position?

A. Yes.

Q. You stated that you knew you had the right to call witnesses, is that correct?

A. Yes.

Q. Did you also know that you had the right to retain [fol. 16] an attorney?

A. Yes.

Mr. Haggerty: I have no further questions.

Redirect examination.

By Mrs. Lewis:

Q. You were in Grand Canyon at least from June 8th until June 12th?

A. Yes.

Q. Right. How was it that you—I take it that you came back because you were at the hearing on the 15th. How was it that you came back?

A. Why, I called my wife up and told her about—

Q. Well, excuse me. Never mind what you told her, but as a result of a conversation with her, did you learn that there was going to be a hearing on the 15th?

A. No.

Q. Did you learn that the boy was in some difficulties?

A. Yes.

Q. Was it a result of that telephone conversation that you came back to Globe—

A. Yes.

[fol. 17] Q. Now, at any time did—did Mr. Flagg come to your residence and discuss your son with you prior to June 15th?

A. No.

Q. Did he ever ask you whether the boy was obedient?

A. No.

Q. Did he ever ask you about whether he helped his mother, whether he worked or did any chores?

A. No.

Q. Never asked you anything about the boy?

A. No.

Mrs. Lewis: No further questions.

Recross examination.

By Mr. Haggerty:

Q. Did you ever attempt to see Mr. Flagg?

A. (No response.)

Q. Did you attempt to see Mr. Flagg?

A. When Gerald was in—

Q. I will confine myself, now, to the month of June, 1964, prior to his commitment?

A. Prior to the commitment we was at the detention home and talked to Mr. Flagg, and we talked to Jerry at that time.

[fol. 18] Q. When was that?

A. That was on—

Q. Approximately?

A. No, I am—I am wrong. I didn't—I didn't at that time. From June the 8th till June the 12th, till he was released in my wife's custody, I did not talk to Jerry. It was after he was committed.

Q. But he was home during the weekend of the 13th and 14th, at least?

A. Yes.

Q. Saturday and Sunday.

I have no further questions.

Mrs. Lewis: No further questions. Please step down.

The Court: Well, I would like to ask the witness a question.

Mrs. Lewis: Oh, all right.

Examination.

By the Court:

Q. You say you were out of town from June 8th to June 12th?

A. Yes.

Q. When did you come back?

A. I come back on—it was midnight on Friday, June [fol. 19] the 12th.

Q. And upon your arriving in town, you learned that your boy was being detained?

A. The conversation with my wife over the telephone from Grand Canyon—

Q. Well, I am just trying to determine, when did you learn that your boy was being detained?

A. On the 10th, June the 10th.

Q. That's from a conversation with your wife?

A. Over the telephone.

Q. Over the telephone. Now, when did you get back to Globe?

A. Midnight, June the 12th.

Q. When you arrived at home, you talked to your wife?

A. Yes.

Q. Where was your boy at the time?

A. He was released sometime Friday afternoon to the custody of my wife.

Q. But was that before you got home?

A. Yes.

Q. And you talked to your wife?

A. After I—

Q. When you got home?

A. Yes.

[fol. 20] Q. Your boy was there?

A. Yes, sir.

Q. Now, between the—you talked to the boy, what the surrounding circumstances were?

A. Yes.

Q. Now, did you talk to Mr. Flagg before the hearing on June 15th?

A. No.

Q. Well, when did you talk to Mr. Flagg?

A. It was—the conversations that I had with Mr. Flagg was after he was—I can't say that word, but after the—he was sentenced on June the 15th, but before that—before the sentence. I didn't talk to Mr. Flagg about this case.

Q. Well, after having talked with your boy and your wife when you arrived home, did you make any attempt to talk to Mr. Flagg?

A. No. I had talked to Rod Weinberg, and he said there was no use in worrying or anything, anything about it, because there was no—

Q. No, I am asking you whether or not you made any attempt to talk to Mr. Flagg?

A. No.

Q. So you didn't talk to Mr. Flagg until after the hearing of June 15th?

[fol. 21] A. That's right.

Q. Did you know what the nature of the hearing was?

A. Only what my wife had told me.

Q. No, I mean at the time of the—just prior to the hearing, didn't you know what it was about?

A. Legally, no.

Q. What do you mean "legally, no"?

A. Well, I wasn't notified, only by Mr. Flagg, of a—notice that Jerry was to—to go up before Judge McGhee on Monday at 11:00 o'clock.

Q. I will hand you Exhibit 1. Didn't you have that in your hands before June 15th?

A. Yes.

Q. And you inquired no further?

A. Not through Mr. Flagg I didn't.

Q. But you did of other people?

A. Yes.

Q. And you attended the hearing?

A. Yes.

Q. You knew what the hearing was about, did you not?

A. I knew it was about making a phone call.

Q. But whatever the hearing was, you heard all the evidence, then?

[fol. 22] A. At the hearing, yes.

Q. All right.

I have no further questions.

Redirect examination:

By Mrs. Lewis:

Q. Just one—one thing further. Did you understand that your boy was charged with making a phone call, or some other boy?

A. I understood it was two boys that was charged with it.

Q. All right. Okay.

No further questions.

Recross examination.

By Mr. Haggerty:

Q. You stated—pardon me. In response to a question of Judge Hyder, that you heard all the evidence. What did you hear?

A. I heard Judge asking Gerald if he made the phone call.

Q. What did your son say?

A. He said he did not, that he dialed the number—well—that he dialed the number, and that the other boy done the talking.

Q. Did the other boy testify?

[fol. 23] A. Sir?

Q. Did the other boy testify?

A. Judge McGhee asked the other boy who done the—

Examination.

By the Court:

Q. Well, the question before you is, did the other boy testify at that time?

A. Yes.

Q. He did or did not?

A. He answered the questions that the Judge—Judge McGhee asked him.

Q. You were there?

A. Yes.

Q. You heard the questions asked?

A. I heard the questions asked in such a low voice that it was hard to make them out.

Q. Did you ever at any time inform anybody that you couldn't hear the proceedings?

A. No.

Q. Did anybody prevent you from hearing any of the proceedings?

A. No.

Q. Did they prevent you from asking any questions?

[fol. 24] A. Yes.

Q. You did—

A. I—

Q. Did you have an attorney?

A. No.

Q. And you asked questions?

A. I wanted to ask questions and talk to the—to Judge McGhee, and he wouldn't listen to me.

Q. But you could hear all that was going on?

A. Not all of it, no.

Q. But that's because—no one knew that you could not hear them, though, as far as you are concerned?

A. No.

Q. Is that right?

A. That's right.

The Court: I have no further questions.

Mrs. Lewis: May I just continue on that?

The Court: Very well.

Redirect examination.

By Mrs. Lewis:

Q. Were you able to hear Ronnie Lewis's answers?

[fol. 25] A. Yes.

Q. Did Ronnie Lewis say that Gerald made—used any of the language that appears in the—in your petition, and in the report?

A. He said he—

Q. I show you a copy of what has been marked Petitioner's Exhibit 2 in this case and ask you if you have seen this before?

A. No.

Q. I refer you to particularly not to the instrument now, but just to assist you, I refer you to the words—after Gerald says, "Ronnie asked this woman today—" I am referring you to the— To the three sentences after that.

Mr. Haggerty: I will object to this. If the witness has stated he didn't hear Judge McGhee's questions, I don't think his testimony as to what Ronnie answered would be enlightening at all.

The Court: Well, he can answer yes or no.

By Mrs. Lewis:

Q. Was any reference made in court to this conversation, that you could hear?

A. No.

Q. What were they talking about?

[fol. 26] A. About a telephone conversation. Now, this—the bottom part of this, I did not hear them bringing that out in court.

Q. It might have been brought out, but you didn't hear it, is that what you mean?

A. It could have been brought out, but I didn't hear it.

Q. Right. Would you—were you able to hear everything that Ronnie said?

A. Yes.

Q. Did Ronnie accuse Gerald of having made lewd remarks over the telephone?

Mr. Haggerty: I will object to this. It is also hearsay.

Mrs. Lewis: The conversation has been brought out.

The Court: Read the question, Miss Reporter.

(Whereupon the question was read by the Reporter.)

Mrs. Lewis: If your Honor please, the charge in this report—

The Court: Well, in view of his answers, he didn't hear all the testimony.

Mrs. Lewis: He didn't hear some of the Judge's questions, his voice was too low. That's what he said. I think—

[fol. 27] I think we ought to know whether he heard—he said that he heard everything that Ronnie said.

The Court: Well, did you or did you not hear everything that Ronnie said?

The Witness: Could—couldn't talk and say it the way I heard—

The Court: No, this Court is just asking you, did you hear what he said?

The Witness: Yes.

The Court: You heard all of what he said?

The Witness: Yes.

The Court: There is no part of his testimony you didn't hear?

The Witness: No.

The Court: Well, you say, "No," you are agreeing with that statement?

The Witness: I heard all of his testimony, yes.

By Mrs. Lewis:

Q. At any time did Ronnie say that Gerald made a lewd telephone call—

A. No.

Q. —or did he use any other language similar to that?

A. No.

[fol. 28] OFFER IN EVIDENCE

Mrs. Lewis: No further questions.

May I, as part of the record—I expected the original records would be here, but we only have copies.

The Court: Do you have any objection?

Mr. Haggerty: Well, it's an official document. I have no objections to it, except on the grounds of materiality.

The Court: All right. Exhibit No. 2—other than what you say—

Mr. Haggerty: I believe it is immaterial to this proceeding, just a juvenile referral report. I don't see the materiality here; except, of course, it was used to enlighten the

witness's memory, so I guess, on those—I will withdraw the objection to it.

The Court: All right, Exhibit 2 be received in evidence.

Mrs. Lewis: I have no further questions of Mr. Gault.

The Court: Do you have any further questions?

Mr. Haggerty: No further questions.

The Court: You may step down. Watch your step when you leave the stand.

Mrs. Lewis: Marjorie Gault.

[fol. 29] MARJORIE ANN GAULT, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mrs. Lewis:

Q. Your full name for the record?

A. Margaret Ann Gault.

Q. In the papers which I prepared in this proceeding, I called you Marjorie. Are you known as Marjorie?

A. That's right.

Q. Are you the wife of Paul Gault?

A. Yes, I am.

Q. And the mother of Gerald Francis Gault?

A. Yes, I am.

Q. You have lived with your husband in Globe at least since September, 1960, or about that time?

A. Yes, that's right.

Q. And were you present on June 15th, 1964, in the Judge's chambers in the Superior Court of Gila County?

A. I was.

Q. I will ask you first about that. How did you first come to know that Gerald was in detention on or about a date in [fol. 30] June, and—that date would have been, if you remember—

A. Well, the 8th day of June I come—Louis come up and got me where I was working, and we stopped at the store,

and it was about 6:00 o'clock when I come home. It was unusual for Gerald not to be there, so I got the dinner ready, and I says to Louis, I says, "You go down and see if Gerald's at Lewis's trailer."

I says, "If he is—" I said, "You tell him to get up here." He says, "Okay, Mom."

Q. Was Gerald at the trailer?

A. No, ma'am, Gerald was not.

Q. All right. As a result—as a result of the conversation with your older son, did you then go somewhere?

A. He says, "Mom," he says, "Mom, I don't want—"

Q. Did you have any further conversation?

A. Yes, I did.

Q. All right. Where did you go?

A. We went down to the detention home.

Q. And it was from—not from any of the authorities that you learned that your son was in detention, is that correct?

A. That's right.

[fol. 31] Q. You did find your son at the Detention Home?

A. I did.

Q. That was about what time, please?

A. That was about 7:30, 8:00 o'clock.

Q. Did you have any conversation with Mr. Flagg at that place?

A. Well, I asked him if I could talk—

Q. No. Yes or no, did you have any discussion?

A. No. No, I did not.

Q. Did you talk to him?

A. All I—I didn't talk to him, no. All I asked him, if Jerry was—

Q. But you did talk to him?

A. Yes, I guess that is talking to him.

Q. Right. During this conversation, did you have reason to ask him when Gerald would come up in court?

A. I did.

Q. Right. And did he tell—what did he tell you?

A. He says, "Tomorrow, about 3:00 o'clock."

Q. Right. That woud have been—

A. That would be on the 9th.

Q. Right. Did you then go to court on June 9th?

[fol. 32] A. I did.

Q. Right. Was this in the chambers of the Juvenile Judge of the Superior Court of Gila County?

A. That's right, it was.

Q. Who was present at that time?

A. There was my son, Louis, Gerald, Mr. Flagg, Mr. Henderson, and Judge McGhee.

Q. Who was Mr. Henderson, if you know?

A. Parole officer.

Q. Was anyone else present?

A. No, ma'am, there was not.

Q. Was Ronnie Lewis present?

A. No.

Q. Was Mr. Lewis present?

A. No.

Q. Were any other adults present?

A. No, ma'am, there wasn't.

Q. At that time, was anybody sworn to testify?

A. No, there wasn't.

Q. Did the Judge ask anybody any questions, and was there any answers made?

A. Well, he asked Gerald if Gerald made the phone call, and Gerald said no. He said he dialed the number and [fol. 33] asked the lady if this was such and such a number, and she said yes; and he says, "Well—" He says, "I will—" He says, "There is a friend of mine here wants to talk to you," and he says he handed the phone over to Ronnie, and Ronnie done the talking to this lady.

Q. At any time, at that time, was Gerald accused by anyone of any crime?

A. I didn't hear.

Q. Could you have heard everything that went on?

A. Yes, I could hear.

Q. Well, then, was any—was he accused of any crime by anyone?

A. Yes. Judge McGhee asked him if he did make the phone call.

Q. Judge McGhee asked him. Did anybody say that he did?

A. No.

Q. Did Mr. Flagg make any report to the Judge, in your presence?

A. No, not in my presence.

Q. Did Mr. Henderson make any report to the Judge in your presence?

A. No.

Q. Was anything further said by anyone at that hearing?

[fol. 34] A. No, there wasn't.

Q. Didn't Judge McGhee indicate what he was going to do with respect to the boy at that time, on June 9th?

A. No, he didn't.

Q. Did he say anything?

A. Yes, he says he'd think it over. I don't know, now, if I asked Judge McGhee, or if Jerry asked Judge McGhee, if he was going to be sent to Fort Grant; and he says, "No," he says, "I will think it over." He says, "I want a couple days to think it over." That's the reason why I didn't think we needed a lawyer.

Q. All right. Then the—if I may lead the witness a little just to clear up—did anything happen about this, then, up to the time that Mr. Gault called you the next day on the 10th?

A. No.

Q. Was it on the 10th that he called you?

A. Yes.

Q. And you—you said something to him and as a result—

A. That's right.

Q. —that he came down from Grand Canyon?

[fol. 35] A. That's right.

Q. Did he come home about midnight on Friday, the 12th, as he says?

A. That's right.

Q. All right. Did something happen with respect to Gerald, on Friday the 12th?

A. Well, on Friday the 12th, Mr. Flagg brought Jerry up to me where I was working.

Q. Now, when you say Mr. Flagg brought Jerry up, did you see Mr. Flagg?

A. No, I didn't.

Q. All right. What happened, and about what time was it on the day?

A. About 3:00 o'clock.

Q. And was this in the City of Globe?

A. That's right.

Q. About 3:00 o'clock, what happened?

The Court: Mrs. Lewis, if you desire to sit down, you may. You don't have to stand while—

Mrs. Lewis: Thank you, Judge. I am so accustomed, in my years of practice, where I wouldn't presume to do it, that I just am not accustomed to it.

The Witness: Gerald come up and he rapped at the door because I keep a screen door locked on account of the baby [fol. 36] creeping around on the floor, and the little ones hollered to me.

By Mrs. Lewis:

Q. Well, excuse me. Leave out any conversation. Did Jerry come to the door with Mr. Flagg, or alone?

A. No, he came alone.

Q. All right.

A. And he rapped at the door, and the children hollered, "Jerry's here," and I didn't believe them, so I went to the door and opened the door, and Jerry was standing there.

Q. Had you received any notice from—from the authorities or from Mr. Flagg, prior to this?

A. No, I didn't.

Q. That the boy was to be released?

A. No, I didn't.

Q. Did you receive any notice of any kind as to what was to happen to the boy?

A. No, I didn't.

Q. Prior to this time that he was released?

A. No.

Q. Right. Did you subsequently receive the notice marked Plaintiffs' Exhibit 1?

A. Yes, I received that.

Q. Right. Would you tell us the circumstances of how [fol. 37] you received it?

A. Well, I received that on Friday evening, about 5:00 o'clock. Mr. Flagg handed it to me where I was working.

Q. When Mr. Flagg handed it to you, what did he say, if anything?

A. He didn't say nothing. He just handed me the note.

Q. And as a result of that note, then, you appeared in court on June 15th?

A. That's right.

Q. Did you receive any other notice of this hearing?

A. No, I did not.

Q. I show you what has been marked a Petition in the Superior Court of Gila County, with a stamp at the top, "Filed, June 9th, 1964," marked, "Petition in the Matter of Gerald Francis Gault, a Delinquent Minor, Petition No. 2379," and I ask you if you have ever seen this before?

A. No, I have not. This is the first.

Q. Pardon me?

A. I have not seen that before.

Q. Well, did you—did I show this to you at the desk here a few minutes ago?

A. Yes, a few minutes here, but I—

[fol. 38] Q. But before that, you have never seen that?

A. That's right, I had never seen that in Globe.

Q. Then you had never received a copy of—

A. No.

Q. —this petition, or any petition in this matter?

A. No, I have not.

Q. I show you a copy of what has been marked Plaintiffs' Exhibit 2 and which is entitled, "Juvenile Referral Report," and "Name: Gerald Gault, age: 15, Birth date: 1-28-49," at the top. Does that refer to your son?

A. That's right.

Q. It has the name, mother, here, as Marjorie. Is that you? Is that correct?

A. That's right, but that name is spelled wrong.

Q. All right. Is the father's name on that sheet?

A. No, it is not.

Q. Did Mr. Flagg or Mr. Henderson or anyone, on account of the juvenile report, have any discussion with you about Gerald's conduct?

A. No.

[fol. 39] OFFERS IN EVIDENCE

Mrs. Lewis: I think I better ask to have this marked in evidence before I forget.

Mr. Haggerty: No objection.

The Court: Do you have any objection as to the petition being received in evidence—

Mr. Haggerty: No objection.

The Court: Which has been marked Exhibit 3. Exhibit 3 is received in evidence.

By Mrs. Lewis:

Q. Did anyone ever discuss with you, on behalf of the juvenile court, whether Gerald behaved himself at home?

A. No.

Q. Whether he worked after school?

A. No.

Q. Whether he went to Sunday School or to Church?

A. No.

Q. To what church he belonged?

A. No.

Q. Whether he was in good physical health?

A. No.

Q. At any time, up to June 15th, at 11:00 o'clock, or at any time after June 15th, at 11:00 o'clock, the approximate time of the hearing, did anyone ever warn you of the possi-
[fol. 40] ble consequences of this proceeding, that is, that the boy might be committed—

A. No.

Q. —and taken from your custody?

A. No.

Q. Did anyone ever advise you that you had the right to engage an attorney?

A. No.

Q. Did anyone ever tell you that you had the right to subpoena witnesses, to call witnesses on behalf of your side, your son?

A. No.

Q. To cross examine any witnesses that might be brought in?

A. No.

Q. Coming to— Now, to the hearing on June 15th, you have heard your husband testify that Judge McGhee, your husband, yourself, and your—your two boys—

A. No, just the one boy.

Q. Just Gerald?

A. Gerald.

Q. And Ronnie Lewis and his father, Mr. Lewis, and Mr. Flagg and Mr. Henderson, the Juvenile Probation Officers, were present at that time?

A. That's right.

[fol. 41] Q. Was anyone else present at that time?

A. No, there wasn't.

Q. Was any other hearing or proceeding held at which any person, adult or juvenile, accused Gerald of a crime?

A. No.

Q. Did you understand for what Gerald was in detention, and what the proceeding was?

A. No.

Q. What did you understand about it?

A. Well, I just understood that Gerald dialed the number, and that he—and he handed the phone over to Ronnie.

Q. Did you understand that—that Gerald was being accused of making the telephone call?

A. Yes.

Q. At that hearing, did you make any statement or any request with respect to witnesses being present?

A. No.

Q. Were you in error, then, when you told me that you asked the Judge why Mrs. Cook wasn't present?

A. Oh, is that the one you mean? Yes, I asked Judge McGhee.

Q. Well, we want whatever conversation you had [fol. 42] about—

A. Well, I asked Judge McGhee why Mrs. Cook wasn't present, and they said she didn't have to be present at that hearing.

Q. All right. Did you understand why you wanted—why did you want Mrs. Cook present?

A. Well, I wanted Mrs. Cook present so she could see which boy that done the talking, the dirty talking over the phone.

Q. Well then, you had been advised that Mrs. Cook was the person who was claiming that she had had a telephone call made to her, is that—

A. I was.

Q. And—I am sorry. You stated what Judge McGhee said to you, but I didn't listen for the answer.

A. Well, I asked Judge McGhee why Mrs. Cook wasn't there, present, and he said she didn't have to be.

Q. And did—did you ask to cross examine any of the witnesses?

A. No.

Q. Did you—were you able to hear all of the conversation that went on?

A. Well—no, I couldn't hear all that Judge McGhee said. [fol. 43] Q. Could you hear everything that everybody else said?

A. I could.

Q. Did you hear anybody at that time accuse Gerald of having made an indecent or a lewd or an obscene or any kind of a telephone call?

A. No.

Q. Did they accuse him of any other crime at that time?

A. No.

Q. I show you what has been marked as Plaintiffs' Exhibit 4 for identification, and which is a photostatic copy of a commitment to the State Industrial School in Case 2379, out of the Superior Court of Gila County, in the matter of Gerald Francis Gault, a Delinquent Minor, and ask you if you have ever seen that before?

A. No. I never seen that before, only here.

Mrs. Lewis: Your Honor, I ask you to take judicial notice of the commitment to the State Industrial School in this case.

Mr. Haggerty: No objection.

Mrs. Lewis: And therefore, I asked—

The Court: What exhibit is that?

[fol. 44] Mrs. Lewis: 4.

The Court: Exhibit 4 will be received in evidence.

Mrs. Lewis: For the record, may we state that that commitment is dated June 15, 1964.

The Court: Does it so show?

Mr. Haggerty: I believe it does.

Mrs. Lewis: Yes.

Your witness.

Cross examination.

By Mr. Haggerty:

Q. Did you attempt to talk to Mr. Flagg or Mr. Henderson, the other probation officer, concerning the case, prior to the commitment?

A. Yes.

Q. When did you make that attempt?

A. On the 9th day of June.

Q. That was the date of the first appearance before Judge—

A. That's right.

Q. —McGhee. At the time of that first appearance, were you informed of the general nature of the charges against your son and Ronnie?

A. Yes.

Q. You knew it concerned an allegedly indecent phone [fol. 45] call made to the woman in the vicinity?

A. That's right.

Q. And you knew the name of the alleged victim, Mrs. Cook?

A. That's right.

Q. How did you find that out?

A. She was my neighbor.

Q. Did she tell you?

A. No.

Q. Well, how did you find it out?

A. Gerald told me.

Q. When did he tell you this?

A. In the detention home when I went down to see him.

Q. So you did then visit him while he was in the detention home?

A. Yes, my son took me down. That's whenever I first knowed it was about 8:00 o'clock at night on the 8th.

Q. Did you visit him any other time—

A. Yes.

Q. —at the detention home? So you had free access to him?

A. First I had free access, I could go down and see him on the 8th and 9th—or the 9th and 10th, rather.

[fol. 46] Mrs. Lewis: Excuse me, your Honor. I don't think that this particularly has materiality.

By Mr. Haggerty:

Q. Who is this Ronnie whose name has been mentioned?

A. A neighbor.

Q. Is he a friend of your son?

A. He was.
Q. Classmate?
A. That's right.
Q. Do you know approximately how old he is?
A. I couldn't tell you.
Q. How old is your son?
A. Fifteen.
Q. When is his birth date?
A. 23rd of January.
Q. And you have stated that you saw this Exhibit 1, the notice from Judge—from Mr. Flagg, informing you of the time and place of the hearing?
A. That's right.
Q. What did you tell your husband concerning the case when he returned from Flagstaff?
A. Oh, I didn't have much to tell him because I—all I knowed is that Jerry was down to the detention home.
[fol. 47] Q. Well, at the time he came back from Grand Canyon, Jerry was out of the detention home, wasn't he?
A. Yes.
Q. Did you hire a lawyer?
A. No.
Q. Did you discuss—
A. No, after I heard Judge McGhee say he was turning it over for a day or so, and I saw Rod Weinberg outside, and I asked him. He said, "No, Gerald's going to be on probation for a year," so I—
Q. Who is Mr. Rod Weinberg?
A. My landlord. Well, he's the Chief of Police, but he's still my landlord.
Q. He's a city policeman of the City of Globe?
A. That's right.
Q. But he is not a juvenile officer?
A. No.
Q. So, at the conclusion of the hearing, Judge McGhee stated that he did not know what disposition he would make?
A. That's right. He said he had to think it over a couple days.

[fol. 48] Q. And then four days later, you received a notice to appear before him again?

A. That's right.

Q. Did anybody tell you you couldn't have a lawyer?

A. No, they didn't.

Q. Did anybody tell you they could—that you could not subpoena witnesses?

A. No.

Q. Do you have a telephone?

A. Yes.

Mr. Haggerty: I have no further questions.

The Court: I have a couple of questions.

Examination.

By the Court:

Q. Mrs. Gault, you did not get a lawyer?

A. That's right.

Q. But no one led you to believe that you could not have a lawyer?

A. That's right.

Q. You knew you could have a lawyer?

A. I could have had if I wasn't—

Q. No. No, I mean, you knew of your rights, that you could have a lawyer?

A. Yes.

[fol. 49] Q. You knew that you could subpoena witnesses?

A. Yes.

Q. You were at the hearing?

A. That's right.

Q. You say you did not get a copy of the petition?

A. I did not.

Q. But you were aware of the contents of the petition?

A. That's right.

Q. And you had notice of the hearing?

A. That's right.

Mrs. Lewis: In order to save time—

The Court: Just a moment.

Mrs. Lewis: I am sorry, Judge. I thought you were finished.

By the Court:

Q. Now, Judge McGhee, on the 9th, did not tell you what disposition was made of the case? That was not the hearing, was it?

A. That's right.

Q. And you receiyed this Exhibit 1?

Mrs. Lewis: Excuse me, Judge. Could I interrupt you just a moment. I didn't hear the end of the question, your question to which she said— Did you say which was the [fol. 50] hearing?

The Court: Well, read the question.

Mrs. Lewis: Please forgive me. Read the question.

(Whereupon the question was read by the Reporter.)

By the Court:

Q. So there would be no misunderstanding, that was not the conclusion of all the hearings concerning your son?

A. That's right.

Q. And you received Exhibit 1, which you know the contents of Exhibit 1?

A. Yes.

Q. Which states, "For further hearing on Gerald's delinquency"?

A. That's right.

Q. So you knew the issue of that hearing was as to the conduct or any delinquent conduct on the part of your son?

A. That's right.

Q. Judge—you are not saying Judge McGhee had informed you that your son would not be committed?

A. No, he did not.

Q. He had stated to you he had not made up his mind?

[fol. 51] A. That's right.

Q. That was prior to the time that you received this notice for hearing on June 15th?

A. That's right.

The Court: I have no further questions.

Mrs. Lewis: Thank you. Do you want anything further of her?

Mr. Haggerty: No.

Mrs. Lewis: Please step down. So—

The Court: Watch your step when you leave the stand.

Mrs. Lewis: —to save time, Judge, I would like to avow —would you stand up, Louis; that if you were to testify, in so far as you were present at the hearing, you would support what the previous two witnesses have testified to.

Louis Gault: The first hearing.

Mrs. Lewis: Do you want him on the stand?

Mr. Haggerty: No.

Mrs. Lewis: Okay. Would you accept that, Judge?

The Court: I didn't clearly—read that back, please.

(Whereupon the record was read by the Reporter.)

[fol. 52] The Court: For the record, this is Louis whom?

Mrs. Lewis: Gault.

Mr. Haggerty: The brother of the—the older brother.

The Court: And this is on the—as to the June 9th hearing?

Louis Gault: Yes.

Mrs. Lewis: Yes, Judge.

The Court: And he was not present on June the 15th?

Mrs. Lewis: He was not present on the 15th.

The Court: You—

Mr. Haggerty: I have no objection to such an avowal. I stipulate to it.

CHARLES DOUGLAS FLAGG, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mr. Haggerty:

Q. Will you state your full name, please?

A. Charles Douglas Flagg.

[fol. 53] What is your occupation, please?

A. Deputy Probation Officer, Gila County.

Q. Are you familiar with Gerald Francis Gault, a minor?

A. I am.

Q. You have heard the testimony here today in the courtroom?

A. Yes, sir, I have.

Q. Were you present at the hearing on June 9th?

A. Yes, sir, I was.

Q. Do you recall what information was provided Mr. Gault and Mrs.—and his mother, concerning the offense against him, offense charged against him?

Mrs. Lewis: Excuse me, your Honor. I would like the question a little more definite as to who furnished the information, and so on, who was present.

The Court: Well, he can answer the question yes or no.

The Witness: Yes. In the hearing.

By Mr. Haggerty:

Q. In the proceedings before Judge McGhee, on June 9th?

A. Excuse me, would you restate the question?

[fol. 54] Q. You recall who was present, then?

A. Yes, sir, I do.

Q. Who was—

A. Judge McGhee, Jerry Gault, Gerald's brother, Louis, his mother, Mr. Henderson and myself.

Q. Were you present during the entire time?

A. Yes, sir.

Q. Do you recall what was said to Mrs. Gault at that time, by Judge McGhee?

A. I am not sure what the Judge said directly to Mrs. Gault.

Q. Do you recall talking to her yourself?

A. Yes, sir.

Q. In your capacity as Assistant Probation Officer?

A. Yes. That was on June 8th, the evening of June 8th.

Q. Let us get back to the—to June 9th, when you were before Judge McGhee. Did you talk to her then?

A. No.

Q. All right. Go back to June 8th. Did you have occasion to talk to her then?

A. Yes. She came to the detention home where I am superintendent, and wanted to see Jerry, and wondered [fol. 55] why he was there. I told her why he was there, explained the whole thing to her, her and Louis, the boy—the older boy came that evening. I let her talk to Jerry, and then I told her why Jerry was there. I believe, I can't say for sure, but I am almost positive I said the hearing—well—"I am going to try to set a hearing for next day."

Q. Were you present at the next day?

A. Yes, sir.

Q. That was when Judge McGhee, the two brothers and the mother were also present?

A. The two Gault boys.

Q. Two Gault boys, yes. Where was that?

A. In the Judge's chambers.

Q. Do you recall if Mrs. Gault asked any questions at that time?

A. No, I—I don't know for sure.

Q. Did her son, not the older boy?

Mrs. Lewis: Louis—oh, Gerald.

By Mr. Haggerty:

Q. Gerald, did he ask any questions at that time?

A. Oh, I am sure he did, but I couldn't say what they were.

Q. Were you present at the hearing on June 15th?
[fol. 56] A. Yes, sir.
Q. Is your recollection of who was present the same that was testified to by the previous witnesses?
A. Yes, sir.
Q. Did the Gault boy testify at that time?
A. Yes, he did.
Q. Did the other juvenile testify at that time?
A. Yes, he did.
Q. Do you recall the substance of that testimony?
A. Essentially both boys admitted making the calls. It was a question—each boy placed the blame of the lewd language onto the other.

Mrs. Lewis: If you are—all right.

By Mr. Haggerty:

Q. But neither one of them admitted making the actual remark, then?
A. Not in that hearing. They did in the previous hearing. The Gault boy made the—admitted making the phone calls.
Q. By the previous hearing, you mean the proceedings on June 9th?
A. Yes, sir.
[fol. 57] Q. When you say make a phone call, what do you mean?
A. Well, the phone calls in question, calling—calling these women and saying what was said.
Q. Was his mother present at that time?
A. Yes, sir, he was—she was.
Q. And at that time, did he state that he had actually talked to Mrs. Cook or whoever answered the phone?
A. Yes.
Q. In other words, that he had done more than dialing the phone?
A. Yes.
Q. Was Judge McGhee present at that time?
A. Yes, he was.

Q. Then, in substance, at the hearing on June 15th—oh, he retracted that portion of his testimony, then?

A. Well, I am not sure that he retracted it.

Q. But he stated the other boy had made the conversations?

A. Yes.

Q. Do you recall Mr. Gault asking any questions of any witness?

[fol. 58] A. He talked to the Judge, asked the Judge some questions. I am not sure what they were.

Q. What is this Ronnie's last name?

A. Lewis.

Q. Lewis. Did he ask any questions?

A. Well, again I couldn't be sure of what they were. I feel sure that he did.

Q. Did Mrs. Gault ask any questions?

A. Yes.

Q. Were they answered?

A. Oh, yes.

Q. Had you ever talked to Mr. or Mrs. Gault concerning the obtaining of an attorney for their son?

A. No.

Q. Did Mr. Gault ever talk to you prior to the hearing on June 15th?

A. No, sir.

Q. Did Mrs. Gault ever—

A. Yes, sir.

Q. Did you ever advise her concerning her rights to counsel?

A. No, I didn't.

Q. Or concerning witnesses?

A. I—I don't think so.

[fol. 59] Q. Did you ever discuss with her whether or not Mrs. Cook would be present at any hearing?

A. She asked me who the woman was that was called, and I told her. That was back again Monday night, the 8th.

Q. That was the first time that—

A. Yes.

Q. When Ronnie was picked up?
A. The same—same day, June the 8th, Monday.
Q. Did he also appear before Judge McGhee on June 9th?
A. Not on the 9th, no, sir.
Q. Did you have any hearing other than the one on June 15th?
A. No, sir, he didn't.
Q. Are you sure of the hearing on June 9th, young Gault admitted making—actually talking over the phone himself?
A. Yes, sir, he did.
Q. That those remarks were obscene or could be considered obscene?
A. Yes, sir.

Mrs. Lewis: What was your answer?
The Witness: Yes.
Mr. Haggerty: I have no further questions.

[fol. 60] Cross examination.

By Mrs. Lewis:

Q. Are you saying, then, that Gerald lied?

Mr. Haggerty: Pardon me. I didn't say—who lied?

By Mrs. Lewis:

Q. Are you saying, then, that Gerald lied?

Mr. Haggerty: When?
The Witness: Yes.

By Mrs. Lewis:

Q. I would be prepared for you to tell me any number of occasions of—if that is what you are going to say.
A. I interrogated Gerald for three hours one night before I got the truth out of him on another matter.
Q. Excuse me just a minute. I want to write that down.

The Court: The Court Reporter is taking it down, Mrs. Lewis.

By Mrs. Lewis:

Q. We are addressing ourselves to the charge in your—and by the way, is that your Juvenile Referral Report, Exhibit 3—Exhibit 2, I am sorry. Is this your report?

[fol. 61] A. Not the top half. The bottom half is.

Q. Well, you are saying that—that you didn't write this part, but this—this is your report?

A. No, I say I didn't write this, but I wrote this here (indicating) down.

Q. Well, whose report is this? Are you familiar with it?

A. This is the Court Report. I did not write it. It is not my report, it is Mr. Henderson's report. But it is the—a copy of the Standard Report that is made by the Juvenile Court.

Q. This is not a report that is made by the Probation Officer for the Juvenile Court?

A. Yes, it is.

Q. This is made by the Court?

A. This is made by the Probation Officer.

Q. Then this is the report of your Department?

A. Yes, it is.

Q. You are saying that the top part was filled in by Mr. Henderson, and the Court action at the bottom was filled in by you?

A. Correct.

Q. Did you investigate this matter, or did Mr. Henderson?

[fol. 62] A. We both did.

Q. On what date did you make your investigation?

A. Let's see. If I remember correctly, I came to the detention home at approximately 4:00 o'clock, June the 8th, and it was—our decision that Gerald and Ronnie should be detained, a hearing was held the 9th, I talked to Gerald later that evening, and the morning of the 9th. I called the woman in question on the 9th.

Q. On the telephone?

A. Yes, ma'am. When the Judge decided to continue it until the 15th, I did some more investigation the rest of the week until the 11th.

Q. All right. What investigation did you do?

A. Well, I checked into the phone calls. I talked to Jerry more to see if he would—would tell me any more. I talked to Ronnie Lewis some more, looking for a change of stories, perhaps.

Q. Why did you need a change of stories?

Mr. Haggerty: Objection to the form of the question. There is no question—statement that he needed a form of change.

The Court: Overruled.

[fol. 63] The Witness: I didn't need a change of stories. It's just been my experience that very often it is changed.

By Mrs. Lewis:

Q. Is it your statement, Mr. Flagg, that Jerry admitted to you that he did some talking that was obscene over the telephone? Is that what he said to you, that he did some obscene talking over the telephone, or any words you are—the report of your department said?

The Court: Now, ask him one question at a time, Mrs. Lewis, so—

By Mrs. Lewis:

Q. Your report says "lewd." Use any word you wish.

A. Well, I didn't write that.

Q. If you had written it, what would you have written?

A. Gerald was picked up by the Sheriff's office in connection with a lewd and obscene phone calls and then, if I did some further interrogation and found some more, I would probably include that on there, too.

Q. Right. Are you responsible for investigating crimes that juveniles are charged with?

A. It all depends on how it is referred to the Juvenile [fol. 64] Court.

Q. In this case, we are talking about this case. Now, did you investigate the crime with which Gerald was charged?

A. Yes.

Q. Right. Now, will you tell us the crime with which Gerald was charged?

A. Delinquency. He was charged with making these phone calls, delinquency.

Q. What, Mr. Flagg, is delinquency, as you are responsible for it in your job?

A. Anything that contributes to the health, welfare and morals of the child. It's in the statutes there, I am not sure what it says.

Q. Oh, yes, it's in the statute, and I am sure of what it says. May I read it to you:

"A. A child who has violated a law of the State or an ordinance or regulation of a political subdivision thereof."

Is that what you were charging Gerald with?

Mr. Haggerty: Object to the form of the question. He—and I would like to have counsel cite what statutes she is reading from.

The Court: Objection sustained.

[fol. 65] By Mrs. Lewis:

Q. I show you Plaintiffs' Exhibit 3, the Petition, and ask you whether you signed this petition?

A. Yes, I did.

Q. And in this Petition, did you charge this child is a delinquent minor?

A. Yes, I did.

Q. I ask you now on what did you base that charge?

A. On the fact that the phone calls were made, and when they were traced, it went to his home. And the fact that when I asked him to recite Mrs. Cook's phone number, he recited it like it was his own.

Q. Now, I will ask you again, did Gerald tell you that he used any indecent, obscene, lewd, or whatever you want to call it, language, to Mrs. Cook over the telephone?

A. No.

Q. Could you answer that yes or no?

A. No, he didn't.

Q. He didn't say to you that he did?

A. No.

Q. Are you saying now that Ronnie told you that Gerald did?

[fol. 66] A. Both boys said—

Q. I am sorry.

A. Excuse me.

Q. Did Ronald tell you that Jerry used some such language?

A. Yes.

Q. Did Ronald say that in court at the hearing?

A. Yes, he did.

Q. He did?

A. (Nodding affirmatively.)

Q. At which hearing would this have been?

A. The second one Ronnie wasn't there. The first hearing.

Q. Did Ronald accuse Gerald in court out of the presence of Gerald?

A. No.

Q. Was the only hearing that Ronald had, the one of June 15th?

A. You said Ronnie?

Q. Yes.

A. Yes.

Q. All right. Now, I will ask you under what section of the law you found this child to be delinquent?

Mr. Haggerty: Objection. It is calling for a conclusion [fol. 67] of the witness. He didn't find anybody to be delinquent, only the judge did.

The Court: Objection sustained.

Mrs. Lewis: If your Honor please, he made a petition in which he alleges that this was a juvenile delinquent.

The Court: Well, he doesn't make any finding, Mrs. Lewis. It is up to the Court to determine from all the facts and circumstances as to a conclusion reached.

By Mrs. Lewis:

Q. In connection—

The Court: He may have alleged it, but he didn't find him—

By Mrs. Lewis:

Q. All right, we will go on that basis. On what basis did you allege that he was a delinquent?

A. Do you want me to recite the statute or—

Q. Well, may I recite Section 8-201, which defines a delinquent child to include—I will start at the bottom:

"(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or [fol. 68] others."

Did you charge him under that?

A. When we file a petition, we set no specific charge in it, other than delinquency.

Mr. Haggerty: I object at this time, and on the grounds the particular statute involves, which states that the petition shall not allege the facts: I refer to A. R. S. 8-222 B.

"The powers of the Court may be exercised upon the filing of a petition by any—"

The Court: Objection sustained.

Mrs. Lewis: The petition must state that there has been a delinquency and must give at least something to show to substantiate this delinquency. It must not, I take it, set out the facts.

The Court: Where does the statute say that it must do that?

Mrs. Lewis: Pardon me?

The Court: What the statute says is that—

Mrs. Lewis: Due process, Judge says it. That there must be sufficient notice to the father and mother of what the child is accused of, and Mr. Flagg telling them that evening in the courtroom doesn't make it.

[fol. 69] The Court: Objection sustained.

Mrs. Lewis: Excuse me, but I didn't mean to be so harsh, but it's just that it is getting to me.

Q. Mr. Flagg, did you advise Judge McGhee with respect to the sentencing of this child?

A. I don't understand what you mean.

Q. Did you advise Judge McGhee with respect to the sentencing of this child what you thought should be done with the child in this case?

Mr. Haggerty: I object to this as immaterial.

The Court: Objection sustained.

By Mrs. Lewis:

Q. What is your function, or what was your function in this case, in assisting Judge McGhee in this case?

Mr. Haggerty: Object to that on the grounds that it is immaterial.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Did you make any investigation with respect to the home conditions of Gerald, for the Judge?

A. Not—not in June. I did in February on the previous delinquency.

[fol. 70] Q. Did you make any inquiries as to whether or not the child obeyed his parents?

A. Again, not in June, but in February.

Q. All right.

The Court: What is the purpose of this type of questioning, Mrs. Lewis, in view of the stipulation of counsel that it is a question of whether the Court had jurisdiction? It isn't the sufficiency or insufficiency of the evidence.

Mrs. Lewis: That is true. That is very true.

The Court: Nor does this Court, to say whether its judgment would be the same as the other Court. The only issue before the Court is whether the Court had jurisdiction in this matter.

Mrs. Lewis: That's right. All I am trying to—all I have shown by this, and I guess it has no relevancy here, is how little was done in this case with respect to a probation report.

The Court: Well, if I view it correctly, you are trying to say that the evidence was insufficient for—of any crime having been committed, therefore the Court didn't have jurisdiction, irrespective of proper notice?

Mrs. Lewis: That is right.

I have no further questions of this witness at this time.

[fol. 71] The Court: Do you have any further questions?

Mrs. Lewis: I should ask one more thing, I am very sorry.

The Court: Very well.

By Mrs. Lewis:

Q. Did you ever warn the parents of the possible consequences?

A. I didn't, the Judge did.

Q. Were you present when the Judge did?

A. Yes, he always does.

Q. And at—was this at June 9th, June 15th, or both times?

A. Both times.

Q. Both. And is there a record made of this proceeding in the Judge's chambers?

A. No. You mean a recorder's—

Q. Yes.

A. You mean the reporter's record?

Q. That's right.

A. No. No, there is not.

Mrs. Lewis: That's right. No further questions.

[fol. 72] Redirect examination.

By Mr. Haggerty:

Q. Do you recall delivering a message to Mrs. Gault concerning the hearing?

A. Yes.

Q. I believe this is Exhibit 1. Do you recall when you delivered that?

A. Yes, sir. It was the night—the afternoon, probably, oh, 3:30, of June the 11th, Thursday.

Q. On Thursday, June 11th.

The Court: For the record, you are referring to Exhibit 1?

Mr. Haggerty: Yes. For the record, I am referring to Petitioners' Exhibit No. 1. I have no further questions.

Recross examination.

By Mrs. Lewis:

Q. Excuse me. What—did there come a time when you returned Gerald to his mother at her place of employment?

A. Yes, ma'am, there was.

Q. And she has testified that was Friday, June 12th, at 3:00 or 3:30. I have forgotten the hour. Does that appear to be correct to you?

[fol. 73] A. No, ma'am, it isn't.

Q. Do you have any records in the case which will show that it was not Friday the 12th?

A. I was in Phoenix the 12th. I left Globe Thursday night the 11th, at about 5:00 o'clock. I was best man at a wedding, the 13th, and the wedding party dinner was the 12th.

Q. I am asking you if there are any records in the file in court when you returned custody, physical custody of the child, to the parents?

A. In the detention home record there would be, yes, sir.

Q. Do you have that report with you?
A. No, I don't.

Mrs. Lewis: No further questions.
The Court: You may step down. Watch your step when you leave the stand.
Call your next witness.
Mr. Haggerty: Judge McGhee.

[fol. 74] Robert E. McGhee, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mr. Haggerty:

Q. Will you state your name and occupation for the record, please?
A. Robert E. McGhee, Judge of the Superior Court of Gila County, Globe, Arizona.
Q. Are you familiar with Gerald Francis Gault?
A. I am,
Q. Are you familiar with the case surrounding his commitment as a juvenile?
A. I am.
Q. Do you recall seeing him and his mother on June 9th of this year?
A. I do.
Q. When and where did that—where did that take place?
A. In—in my chambers.
Q. Who else was present, do you recall?
A. At that time, his older brother, his mother, Mr. Henderson, the Chief Probation Officer and Mr. Flagg, Assistant Probation Officer.
[fol. 75] Q. What was the purpose of that meeting?
A. They had been notified to appear for hearing concerning a charge that the son had been making certain lewd phone calls.

Q. Did you inform them of the fact at that time, Mrs. Gault?

A. I am sure I did.

Q. Did you have occasion to examine the minor, Gerald Gault?

A. Yes, I talked to Gerald Gault and asked him questions concerning this.

Q. Was his mother present at that time?

A. His mother was present.

Q. Do you recall what he stated at that time?

Mrs. Lewis: Excuse me, your Honor. If I have been ruled out on this before, I would like if we may now not stick—not go into the issue of the minor who was in court at this time, as conflict of testimony between the parties, and stick to the issue that is raised in the petition.

The Court: Well, you are saying they had no notice and they weren't informed of the—

Mrs. Lewis: That's right. But of the—what the boy said to the judge at this time, I thought—

[fol. 76] Mr. Haggerty: Seems to me—

The Court: On what ground?

Mrs. Lewis: On the ground that that would be no part of the issue before the Court at this time.

Mr. Haggerty: Seems to me that counsel has tried to make the evidence an issue.

The Court: Overruled.

The Witness: Yes, the boy admitted that he had called the number of the lady—I have forgotten the name. He said that he had not done most of the talking on this occasion, that the other boy, the Lewis boy, had done most of it. He admitted that he knew the phone number, he told me that he had called that number several times before; that he got it originally by—just dialing a number, and he got the number, and he recited the number. He knew definitely what the number was. I asked him, "Have you ever made phone calls like this before?" Well, he said the only time was over sometime before when—before his

family moved to this area. He and his older brother, who was in chambers at the time, had made phone calls at this other place. He said that he had used no lewd names or anything like that in the previous calls, but that he had, [fol. 77] he and his brother, made silly calls, or funny calls, or something like that. I have forgotten the exact term, but that was the general meaning of the phone calls. He admitted at that time that he had said some lewd words. It was concerning sex, and if I remember right, the one he had used, would she give him a little; but there was some other—other words about "Have you got big bombers," or things like that. Now, he admitted making one of these statements. I don't remember exactly which one it was, but he admitted making one of those. But he accused the other boy of doing most of the talking, and—

By Mr. Haggerty:

Q. Was that pretty much the extent of your examination?

A. Well, no. We—I do remember—remember of him—there was some talk about his school work, how he got along in school, and some talk about him wanting to go to—to Grand Canyon with his father. He said that if his father hadn't let him down—his father had promised to take him to the Grand Canyon, but then when it came time to go, he just went off and left him; and he cried, he said, well, if—if his dad had just taken him to the Grand Canyon, this would all never have happened. We also talked—there [fol. 78] was quite a discussion at the time about his previous times in court, and I remember specifically telling him that, "You remember when you were here before I told you what might happen if you would get into trouble." There was some discussion that—on other occasions he had been falsely accused. All these other charges he had been somewhat falsely accused, except the one in February he did admit being involved in this.

Q. Were his parents present the entire time?

A. His mother was present the entire time, yes.

Q. What was the conclusion of that proceeding?

A. The conclusion was that I wanted to consider the matter further. I told him, "I am going to think about it, and—and let you know something about it in the future," or something to that occasion—or to that effect, I mean.

Q. Did Mrs. Gault say anything to you about her right to have a lawyer represent her?

A. There was no discussion of that, I believe.

Q. Was there any discussion of subpoenaing witnesses?

A. I believe not, no.

Q. When was the next time you had occasion to discuss [fol. 79] with Mrs. Gault, or—

A. The next time, I believe, is the 15th, that date that has been testified to. I believe that's the correct date, the 15th of June.

Q. Does your memory coincide with those of the other witnesses here as to who was present?

A. I believe as to who was present, yes.

Q. Did you examine the Gault boy that day?

A. I did.

Q. Do you recall what he had to say, then, concerning the phone call?

A. Well, it was—it was similar to his previous discussion. He said that the other boy had done most of the talking, but there was some admission again of some of the lewd statements. He—he didn't admit any of the more serious lewd statements. There was a discussion again of him admitting to Mr. Henderson that he had made calls before, and that this was a longer discussion with the lady they were talking—the boys were talking to. This was a longer discussion. I think Mr. Henderson entered into the discussion at that time and made certain statements to the boy which were not denied by the boy at the time. I can explain what those—that was, if you like.

Q. Well, Mr.—to go to something else for a minute, Mr. [fol. 80] Gault testified that he was not allowed to ask questions. Do you recall what that was about?

A. I don't remember him being denied the right to ask questions. The only two persons who told firsthand about what had happened were the two boys. The other boy, the Lewis boy, and the Gault boy.

Q. How many probation officers worked at—out of your court?

A. Two.

Mr. Haggerty: I have no further questions at this time.

Cross examination.

By Mrs. Lewis:

Q. Judge, you stated that the parents had notice of the June 9th hearing?

A. I don't believe I so stated. I stated that Mrs. Gault was there, I believe. I don't remember a direct statement that I made to the effect that she had notice. I don't believe I made that statement.

Q. Are you now saying that she was not given notice?

A. No, I am not saying that. I am just saying that—[fol. 81] you asked me if I said that she had notice, and I don't believe I said anything about it.

Q. Well, I thought you had. That is why I put it in that form. Judge, did—were the parents given notice as required by the statute, that you would hold a hearing on June 9th?

Mr. Haggerty: Objection to that. There was no testimony that there was a formal hearing on June 9th.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Judge, what was the hearing that you held on June 9th? Was that the hearing?

A. I consider it a hearing, yes. The parent was there, and the boy was—a statement was made as to what it was about, and what the probable consequences were of a boy

getting into trouble; and I don't—I don't know, I don't believe that the statute requires a written notice. It's been my practice that if they do appear voluntarily for the hearing, and we proceed with it, it's a hearing.

Q. Did—strike that, please.

In the statement that you made, just previously, about the silly phone calls and the fact that Gerald admitted that [fol. 82] he did say some of the lewd words concerning sex, were these statements that were made to you in the courtroom in the presence of either or both parents?

A. Yes, it was—they were made at the first hearing, and they were made at the second hearing, made in the presence of the mother at the first hearing, and the presence of the mother and the father both at the second hearing.

Q. All right. Now, Judge, would you tell me under what section of the law or tell me under what section of—of the code you found the boy delinquent?

A. Well, there is a—I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law, that when one person uses lewd language in the presence of another person, that it can amount to—and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8-201, Subsection (d), habitually involved in immoral matters.

Q. All right. Judge, would you tell us the immoral matters in which he was involved in that that led you to [fol. 83] the decision?

A. Yes. Yes, I can tell you that. On July—let's see. On July the 2nd, 1962, there was a referral made to our office. Thought it was not—a referral was made, no follow-up was requested by the Globe Police Department, where the boy had stolen a baseball glove from another boy and lied to the Police Department about it. Also—

Q. Excuse me, was there a hearing held in your Court on this matter?

A. There was no hearing. No hearing.

Q. There was no accusation, then?

A. There was no accusation.

Q. That the boy had stolen a baseball?

The Court: Permit the Judge to give the answer to—

The Witness: No, there was an investigation, but because of lack of material foundation for the—

By Mrs. Lewis:

Q. Judge, just a minute. Before we go further, could we refer back to these section that I showed you of the criminal code, and when you spoke about this section, disorderly conduct, were you referring to 13-377, entitled "Vulgar or obscene language"? This is just for the record. [fol. 84] A. That, and Section 8-201.

Q. Right.

A. 201, Section D, where a boy is habitually engaged in immoral matters, and I consider it an immoral matter when a boy calls some—a lady up on the telephone and ask her to give him a little, and talks about the bombers, and that sort of thing. I consider that immoral in connection with Section 8-201, Section D.

Q. Right. For the record, may I read it, Judge?

A. Very well.

Q. "A child who habitually so deports himself as to injure or endanger the morals or health of himself or others."

A. Yes, that's correct.

Q. Now, is there anywhere in the record where it shows that you found the child delinquent under Section A and Section B of 8-201?

A. No, it never appears when—a child in juvenile court is not guilty of a crime. That's one of the matters that I always explain to the boys and girls that are in court. They are not charged with a crime when they come into the court. They are charged with delinquency, and it is their—my finding, that they are charged, and it amounts to [fol. 85] merely delinquent, and not that they are found guilty of a crime.

Q. Were the parents ever advised that you found the child delinquent under Section A and/or Section B of Section 8-201?

A. No, they were never so advised. They were merely advised of the—what the boy had done and admitted doing in court.

Q. All right. Judge, I interrupted you. Then would you proceed to tell us, then, the additional bases, if any, upon which you found him "habitually immoral" I think were your words?

A. Yes. On February the 2nd, 1964—

The Court: Just a moment, Judge. Aren't we going outside the issues of the case here, Mrs. Lewis?

Mrs. Lewis: Well, this is a—actually, the first time in which I am learning something about the case, Judge. This is the first time I am learning that the boy was considered habitually immoral.

The Court: But that is not the purpose of this hearing.

Mrs. Lewis: Pardon me?

The Court: That isn't the purpose of this hearing.

[fol. 86] Mrs. Lewis: You are right, Judge, but I think still, since we have gone this far, I would like to know on what else the Judge based it, or—

The Court: Do you want to go into the fact that—from the time that the boy—he has had any previous trouble, and so forth, bring it all up on the hearing to see whether or not he had a proper basis for proper background, taking into consideration what the matters were that he committed him on on June 15th? Now, if that is your purpose, you are—you are asking this Court to determine whether or not this Court was—would uphold committing this child, on the basis of the hearing held on June 15th.

Mrs. Lewis: Yes. Well, we had agreed that that would not be the issue, that that was to be before Judge McGhee, if it was to be.

The Court: If you found out—we have the facts upon which the hearing was held, the information. He was com-

mitted. You want—you are asking, in his opinion, about the law, asking the Judge. It is either—that is invading the province of this Court. If there is no law or it had no jurisdiction, you're—your petition is well taken. If there was jurisdiction, then it's not up for this court to deter-[fol. 87] mine whether or not the Court of Gila County acted with wisdom or whether or not this Court woud act the same.

Mrs. Lewis: Yes. You see, your Honor, the record of this Court shows—the only thing that it shows, and it's very deficient, is that there was a petition charging the child with delinquency, there was an order of commitment, finding him—committing him and sending him down to the Industrial School, and a Juvenile Referral Report. That's all, presumably, that is in that file. They gave me a copy of it, and I am sure they are holding nothing back. This Juvenile Referral Report charged lewd phone calls. Now, Judge McGhee said he did not base his finding on that alone, but he based it on an additional section, Section A, within which this would come under Section D.

The Court: Irrespective of what law he based it on, Mrs. Lewis—

Mrs. Lewis: Yes.

The Court: If the Court had jurisdiction to perform the very act he performed, then a habeas corpus case would not lie.

Mrs. Lewis: If, on July 2nd, 1962, the boy was—there was a report from the Police Department that he stole a [fol. 88] baseball glove, and there was no hearing on that, that does not give Judge McGhee authority to send him down under Section D, so it's the same thing, I am satisfied, as though it was written down here in the record, if Judge McGhee is adding that to his record. Now, that's why I was asking the rest of this. But I will desist, Judge. I mean, I am satisfied to ask him some more questions now about notice and warning and so on.

The Court: Mrs. Lewis, the Court is not trying to preclude you from going into it.

Mrs. Lewis: I understand.

The Court: The very factor, the law, the Court must determine in this case.

Mrs. Lewis: I understand.

The Court: But to rehash the whole matter, because to this Court I must find if there was jurisdiction, your habeas corpus would fall.

Mrs. Lewis: That's right.

The Court: If there was no jurisdiction, you must prevail.

Mrs. Lewis: Right.

All right, then, I will ask, your Honor, that the testimony of Judge McGhee, with respect to finding the child delinquent under Section D be stricken for the fact that [fol. 89] there is nothing in the record of the Juvenile Case which shows that he was found delinquent under Section D, 8-201.

The Court: You ask it be stricken?

Mrs. Lewis: Yes, your Honor.

The Court: Well, you asked the question, and that's the answers you received. Mr. Haggerty could have objected to the very question that you would ask, and the Court would have sustained the objection. Your request will be denied.

Mrs. Lewis: All right. I will assume that I have my exception. I don't know what it is for.

Q. Judge McGhee, at the hearing on June 9th, and the continuance of that hearing on June 15th—am I using the correct terms?

A. I think it would be correct.

Q. Were any adult witnesses sworn and/or heard against the boy Gerald Gault?

A. No. It was all, in my mind, done upon the admission of Gerald Gault.

Q. Did Mrs. Gault, the mother, ask you about having Mrs. Cook in court to testify?

A. I believe she did. She or Mr. Gault, one of them,

asked why, and I told them I didn't feel it was necessary. I can explain, if you like.

Q. Did your Honor at any time on June 15th or on June [fol. 90] 9th, prior to the start of the hearing, warn—or any time before that, warn of the possible consequences of sending the boy to the State Industrial School?

A. Yes. In February, I believe February 1st—or February 25th of 1964, when he was placed on probation, it was definitely explained to them. Do you want me to go further?

Q. Well, I am asking—

A. And, yes, then again on February the 9th, the matter was discussed, and—

Q. Do you mean June the 9th?

A. What did I say?

Q. February.

A. Oh, pardon me. On June the 9th, he was reminded of his previous admonition of February the 25th.

Q. As a matter of fact, on June the 9th, and I say this from the discussion with the boy and his parents, didn't you make some very fine remarks to the boy, didn't you say things to try to show that he was a manly boy and he had great possibilities? I mean, didn't you—

A. I am sure that I did. I—I told him that he—I probably at that time—I have a standard routine I go through [fol. 91] if I see that a boy has some possibilities and can change his ways. I try to point out to him that he has possibilities, what a wonderful thing the mind is and the body is, and that he has—on his side. That he could make something out of himself, if he just would, and I am sure that I went through that in detail.

Q. Could you understand that perhaps these parties felt rather good about this statement, would you gather from their attitude in some way, that they felt this was a fine thing that you had said?

Mr. Haggerty: Objection.

The Court: Objection sustained.

Mrs. Lewis: Your Honor, I think their—their state of mind at this time was pretty important.

The Court: On what theory?

Mrs. Lewis: On the theory of what happened later, of what they—what they didn't do, the fact that they didn't get counsel.

The Court: You mean, it would be an excuse because the boy did not get probation?

Mrs. Lewis: Not an excuse. In their mind—

The Court: Well, I understand on what theory you are going on, Mrs. Lewis. You are telling the Court that they [fol. 92] were deprived of counsel, or that they were promised that the boy would get probation. Now, if you will avow to the Court that that would be the evidence, I will permit you to proceed on that.

Mrs. Lewis: There was no promise made to them as such, Judge, but what their frame of mind was when Judge McGhee made this good statement about the boy, and it was a fine statement, and they were very elated; if they went out of that Court feeling that the Judge was going to give this boy another chance, I think that it's an important fact in this case.

The Court: All right, I will ask you on what fact?

Mrs. Lewis: I beg your pardon?

The Court: I won't be repetitious in what I have said before, Mrs. Lewis. On what fact would that go to the question of jurisdiction?

Mrs. Lewis: On the failure to give warning of the possibility that the boy—or the probability that the boy was going to be sent to the State Industrial School, and take him—

The Court: Why can't you ask him that directly? I will permit you to.

Mrs. Lewis: No, that isn't the testimony. Now the [fol. 93] testimony is whether or not the Judge made this very fine statement about how—what possibilities this boy had, whatever it was that he sent—

The Court: He has answered your question on that.

Mrs. Lewis: Pardon me?

The Court: He has answered your question on that, Mrs. Lewis.

Mrs. Lewis: All right.

The Court: You are asking him what frame of mind they were in when they went out of his courtroom. Is that your question?

Mrs. Lewis: From what he could observe, whether or not this had any effect.

The Court: Do you have any objection to that question?

Mr. Haggerty: I do.

Mrs. Lewis: If your Honor—

The Court: Just a moment, please. What is your objection to this?

Mr. Haggerty: How can the witness be expected to answer as to somebody else's frame of mind? It is not the witness's—

Mrs. Lewis: If your Honor please, may I read from here where it says that what the Judge says can have a great [fol. 94] effect on a boy and on his parents?

The Court: That is a philosophy of juvenile proceedings, is it not?

Mrs. Lewis: That's right, and it's a philosophy—

The Court: It doesn't go to jurisdiction.

Mrs. Lewis: It goes to jurisdiction if the parents felt by this that the Judge thought that this boy was a boy who should not be sent to Fort Grant, but should be given another opportunity for this anti-social conduct that he had been charged with, and did—when they were thrown off their guard, to prepare themselves in some way, as they have a legal right to do, for the continuance of this hearing. I—I think this is very germane, Judge.

The Court: Well, the Court will permit you to ask a question or two on that. We will save time on that. If it is germane, the Court will consider it. If it is not, the Court will disregard it.

By Mrs. Lewis:

Q. Judge McGhee, I take it that you conduct juvenile hearings in an informal matter in your Court?

[fol. 95] A. That's correct.

Q. That you do not have a Court Reporter present?

A. That's correct.

Q. Even—

A. Or usually—not usually.

Q. Even in cases where you feel that it may be necessary to take the boy from the parents' custody and place them in the State Industrial School, or some other place as the statute allows, even in those cases you don't—don't have a Court Reporter?

A. Ordinarily not.

Q. Fine. And in this case, you did not?

A. Did not, no.

Q. Right. On June 9th as you have stated, and as the boy and the parents have stated to me, if I will be permitted to, you did make a very fine statement to them which much impressed them? Did you feel that the—that the boy was recalcitrant, that he was flouting the authority of the—would flout the authority of the Court in any way, or—or do you think that he paid attention to what you said to him?

Mr. Haggerty: Objection.

The Witness: It appeared that he had not paid much [fol. 96] attention to what I said to him.

By Mrs. Lewis:

Q. You are talking now about February?

A. February, yes.

Q. Well, would you feel that on June 9th that he was paying attention to what you said to him at that time?

Mr. Haggerty: Object to this unless he knows the state of mind of the person to whom the question has been directed.

The Court: I can't see the materiality, Mrs. Lewis. What is the materiality?

Mrs. Lewis: The materiality, as I say, goes to the—I

will only repeat myself, to the frame of mind of these parties when they left, when there was a further proceeding in the matter, or continuance of the hearing.

The Court: Well, to make the record for you, Mrs. Lewis, is it by this testimony that you are trying to show that any statement made by Judge McGhee at that time was so understood by your clients that they were lulled into the fact that they needed no attorney because the boy was going to receive probation?

Mrs. Lewis: That is in part what they felt, Judge, very much so.

[fol. 97] The Court: Well, I haven't seen the predicate for any kind of testimony like that, but I will let you ask the Judge those questions directly, or I will ask the Judge the question directly, if you wish.

Mrs. Lewis: Please do so, Judge.

Examination.

By the Court:

Q. Judge, was there any time, to your knowledge, that any statement or action that you took that you felt you conveyed any impression to the petitioners here that the boy would receive probation?

A. Only that I said I would think it over. I didn't know what I was going to do. I didn't want to be hasty in the matter.

Q. But other than that—

A. Other than that, I at no time told anyone what I was going to do. I did not tell anyone what I was going to do.

Q. And this statement was made—

A. Or that I thought I might do. Well, I—I will take that—I must have just discussed something generally with the probation officer, but I at no time told them what I was going to do. I may have talked about the possibility, but I [fol. 98] am sure that I at no time told them, anyone, what I was going to do because I didn't know myself what I was

going to do, because I was not satisfied, from the testimony there at that time; and we—I felt that we should have the other boy, some information from the other boy, and go into the matter a little deeper.

By Mrs. Lewis:

Q. Did your Honor question the boy separately?

A. No, they were together when they were questioned.

Q. With respect to the continuance—the further hearing on June 15th, did your Honor make an order with respect to the appearance of the parents at the—

A. There was no minute entry made, if that's what you mean. I notified the probation officers to notify the parents to be present for an additional hearing.

Q. Did your Honor at any time—well, I think this has been asked on direct. Did your Honor at any time advise the parties that they had a right to cross examine the witnesses?

A. I don't believe I did.

Q. Did your Honor order any probation or other reports [fol. 99] on which you relied in connection with this matter, in addition to the testimony at the hearing?

A. Well, I had certain reports, and I have certain reports, previous reports, concerning the boy, which I have in the files.

Q. Are they in the—in the File No. 2379 of the—juvenile case?

A. No, they are not kept in the—the official file in the office of the Clerk of the Court. They are kept in the file of the probation officer.

Q. Were these matters on which your Honor relied in coming to a conclusion in addition to those things presented on June 8th?

Mr. Haggerty: I object to the question. To ask upon what the Court relies is objectionable, it is not proper, not subject to cross examination.

The Court: Objection sustained.

Mrs. Lewis: If your Honor please, the—if the Judge relies on something that the parents don't know about, that there isn't an opportunity to examine, such as a statement that the boy stole a baseball glove, and no charge made, I think this is very germane.

The Court: Well, we are talking about the hearing on [fol. 100] June 20th—what, June 15th?

Mrs. Lewis: On June 8th and June 15th, and the commitment is a basis of that, and it—whether the Judge relied on anything in addition to what was said in the presence of these two parents in making his decision—

Mr. Haggerty: Well, whether the parents know what he relied on or what he did not rely on, I fail to see how this has any bearing.

The Court: I will sustain the objection.

Mr. Haggerty: I and you don't always know what the Court relies on.

Mrs. Lewis: I think it has utmost importance, if there is a proper hearing, if the Judge relies on something of a file which is not in the case, about which the parents do not know anything, and they cannot in any way refute a claim that the police did not press charges, that the child stole a baseball glove.

The Court: This hearing was about the lewd phone calls that were made, Mrs. Lewis. We have the evidence surrounding the circumstances upon which this hearing was held.

Mrs. Lewis: Right.

The Court: Now, you are saying that the Judge must have more evidence than he had—

[fol. 101] Mrs. Lewis: Oh, no, I didn't.

The Court: —or that he is acting without jurisdiction—

Mrs. Lewis: Excuse me. I didn't say at this point that he should have more evidence. Now, Judge McGhee says, "I didn't send him down under Section A, I sent him down under Section A or D." I don't mean to misquote it, Judge.

The Witness: I don't believe I said quite that. I said both.

By Mrs. Lewis:

Q. Both. All right, both. I didn't mean it—

A. Probably another ground, too. I don't believe—there may be another one there that—that is applicable.

The Court: Let's assume, Mrs. Lewis, that he—that there has been a crime that is committed and he cites the improper section. Let's take for instance that he could take into consideration disturbing the peace, and he doesn't put disturbing the peace, but the evidence shows that the boy disturbed the peace. Isn't that a violation of law?

Mrs. Lewis: I think it is necessary for the parents or anyone who is being charged, or has the custody of—of [fol. 102] someone who is being charged, to be properly advised. If they are properly advised, and the section is cited as 338, when it is 337, or 388, when it's 377, but they are properly advised. Then I would say that was immaterial. But the question comes down to whether they were properly advised.

The Court: As to whether or not this boy was picked up because he is alleged to have committed certain acts, namely, lewd—namely making phone calls and using lewd terms, isn't that right? That is the charge here.

Mrs. Lewis: That's right.

The Court: And that is what the parents understood that the boy was charged with.

Mrs. Lewis: That's right. But I know they—

The Court: Now, whether he has any further background on whether this boy has done any acts previous to this, the matter that you are going into is the fact of whether or not he committed him to Fort Grant, or whether he should just give him probation. Now, that is the very point you are making to this Court.

Mrs. Lewis: The point I am making to this Court actually is that there was no proper notice to the parents.

[fol. 103] The Court: We have that here. We have the notice.

Mrs. Lewis: And that there was no—

The Court: We have the notice, Mrs. Lewis, it's in evidence. There is no dispute as to the notice.

Mrs. Lewis: Oh, yes, there is, your Honor. There was insufficient notice, if ever there was insufficient notice, the business of giving a piece of note paper like that to a parent to come into Court, and call this legal notice.

The Court: Mrs. Lewis, you misunderstood the Court. There is no disagreement as to the type of notice these people had, if any. This is a legal point to argue.

Mrs. Lewis: That's right.

The Court: But we have the evidence as to the type of notice, or—or what kind of information they had there is notice.

Mrs. Lewis: Right.

The Court: All right. There is notice given in the evidence as to whether or not—they knew they could have an attorney or not.

Mrs. Lewis: Now, there—now, the dispute as of this [fol. 104] moment is if the Judge is stating that he committed the boy and took him out of parents' custody on something additionally that goes outside the record here. The parents have a right to know if they charged the boy with a crime, and if there was a hearing on it. That's my position.

The Court: And what are those facts?

Mrs. Lewis: Well, I was just asking—

The Court: The phone calls?

Mrs. Lewis: No, I am sorry.

The Court: Whether or not he made these phone calls?

Mrs. Lewis: In addition to the phone calls, if there is anything else on which the Judge based sending the boy to Fort Grant. Those must be matters on which, if there was to be a hearing—so that the boy could be properly represented, the parents could have witnesses there to face them and go through the same thing as this.

The Court: That is what I have been saying right along, too, Mrs. Lewis. Your position here is that the—isn't a question of jurisdiction—

Mrs. Lewis: That is jurisdiction, Judge.

The Court: It is the question of the severity of the sentence that's imposed. That's your position upon the [fol. 105] facts that were presented to—

Mrs. Lewis: Oh, no, excuse me, Judge. That's jurisdiction as well because if the Judge based—

The Court: Do you have any more questions of this witness? I am going to permit you to ask any further questions that you have of this witness, and I am permitting you and Mr. Haggerty to argue the law to the Court.

By Mrs. Lewis:

Q. Did your Honor at any time apprise the parents of the exact charges against the boy, citing the sections of the law that you say he had violated?

A. No, it's not the practice to cite the sections of the law because the—the law says that you only—you do not set out in your petition the facts, merely that the boy is delinquent. That's all the law requires. If you do that and do not set out the facts—so we merely put down in the petition that he is delinquent, or that he is neglected, or whatever the occasion may be in the boy's particular case.

Q. Are the parents served with a copy of that petition which only sets out delinquency?

A. I don't believe so.

[fol. 106] Q. Did your Honor in this case make any order as referred to in Section 8-224 (a) when the jurisdiction of the juvenile judge—

The Court: Well, just ask him if he made an order on that without reading the section.

Mrs. Lewis: Right.

Q. On Section 8-224?

A. I don't have that in front of me. I don't remember the section. You are referring to the one concerning the—

Q. May I read it to him?

The Court: Well, what is the title of it?

The Witness: The parents of the boy—

By Mrs. Lewis:

Q. "Subpoena of parents or guardian; witnesses; contempt; attachment," is the title.

A. I don't believe any order was made in connection with it. It was in his file in connection with other cases. The only order was a verbal order to the probation officers to notify them of the—of the hearing.

Q. Thank you, Judge. Did your Honor at any time talk to Mrs. Cook in connection with this matter?

A. No, I did not personally talk to Mrs. Cook. I acted entirely upon the statement of the boys.

[fol. 107] Q. Was it your—your Honor's belief that the boy had committed a misdemeanor on June 8th, 1964, under Section A of 201?

Mr. Haggerty: Objection, it is immaterial.

The Court: Objection will be sustained.

Mrs. Lewis: Object to that, your Honor. The law gives me my objection.

Q. Had the boy been given probation on June 8th, 1964?

A. He was.

Q. Was the boy on probation for a misdemeanor?

A. I think the referral from the officers stated that it was a felony because—the money, in that case, may be questioned, I will put it that way. It's a question of whether it was a misdemeanor or felony, having been taken out of—money was taken out of a lady's purse at the show, and it was probably a misdemeanor, probably a misdemeanor because as I say, we don't determine that the boy has committed a felony or misdemeanor, we merely determine that he is delinquent.

Mrs. Lewis: I think that I am not to pursue what is further in that file on which the Judge based his decision.

The Court: Well, you can ask him.

[fol. 108] By Mrs. Lewis:

Q. What else did you base your decision on to take the custody of that boy from the parents?

A. You—

Mr. Haggerty: Objection.

The Witness: I will be glad to answer that question.

Mr. Haggerty: I will object as invading the province of the judiciary.

The Court: The objection will be sustained.

Mrs. Lewis: I am sorry. I have—oh, one further question.

Q. Where there is father who is responsible for the support of the child, does your Honor expect him to be in court?

Mr. Haggerty: Objection to that. It is immaterial. We are dealing with this particular case.

The Court: Sustained.

Mrs. Lewis: If your Honor please—all right, thank you.

Q. Did you consider it necessary for Paul Gault, the father, who was responsible for the support of this child, to be in court at the time of the hearing of this matter?

[fol. 109] Mr. Haggerty: I object to that as vague and immaterial.

The Court: Overruled.

The Witness: I—at the time, the father was away, and it was my impression at the time that he was generally away, that he was—he was not habitually at home, that he lived various places and worked here and there and was not generally at home. I am not sure he would know—I am not sure that I knew where he was at the time. I considered, I think that notice to one of the parents would be sufficient.

Mrs. Lewis: Thank you, I have no further questions. Thank you.

Mr. Haggerty: I have no questions.

The Court: You may step down, Judge. Watch your step when you leave the stand.

Any objection to the Judge being excused?

Mrs. Lewis: No.

The Court: You may be excused if you wish, Judge.

Call your next witness.

Mr. Haggerty: I have no further witnesses.

The Court: Any rebuttal?

Mrs. Lewis: No.

The Court: All right, I will—

[fol. 110] Mrs. Lewis: Excuse me.

The Court: I will hear from each one of you briefly.

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 112]

IN SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 1

Mrs. Gault:

Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency.

/s/ FLAGG

[fol. 113]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 2

JUVENILE REFERRAL REPORT

Name Gerald Gault Age 15 Birth Date 1-23-49
Address Globe Mobile Homes Birth Place
Date 6-8-64. Charge Lewd Phone Calls
Sex M Race W Phone 5-4181 or 5-6162
School G. H. S. Grade 9th
Works
Father Works
Mother Marjorie Works Baby Sitter
Guardian Works
Referred by S. O. Globe Arresting Officer T. Trojonavich
Parents Notified by Date Hour
√ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

Gerald says Ronnie ask (this woman today) "Are your cherries ripe?"—"Do you have big bombers"—"Do you give any?" "Do you have a big long prick?"

Court Action Case No. 2379
Handled by Probation Officer
X Placed in Detention 6-8-64 R.H.H.
X Released from Detention 6-16-64
X Petition Filed 6-9-64
X Hearing Held 6-15-64
Dismissed
X Committed to State Industrial School 6-15-64
Committed to Good Shepherd School
Placed on Probation

[Stamp—Filed at 4:00 P.M.—June 15, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

[fol. 114]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

[Stamp—Filed at 10:00 A.M.—June 9, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

HAVING AND EXERCISING JURISDICTION IN JUVENILE MATTERS

Petition No. 2379

IN THE MATTER OF

GERALD FRANCIS GAULT

A DELINQUENT MINOR

Your petitioner respectfully represents to this Honorable Court that he is a resident of Gila County, State of Arizona; that he is informed and believes and therefore alleges that said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; that said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare.

WHEREFORE, your petitioner prays this Honorable Court issue an order for the production of said minor, at a time and place to be named by the Court, and that upon a hearing such order may be made by the Court regarding the care and custody of said minor as to the Court may seem just and proper, and that, pending such hearing, such other orders regarding the care and custody of said minor may be made as the Court may deem necessary.

/s/ CHARLES D. FLAGG

State of Arizona,
County of Gila, *ss.*:

Charles D. Flagg, being first duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

/s/ Charles D. Flagg

Subscribed and sworn to before me this 9th day of June, 1964.

.....
Notary Public

My Commission Expires:

[fol. 115]

In the Superior Court of the State of Arizona

In and for the County of Maricopa

Petitioner's Exhibit 4

In the Superior Court of the State of Arizona

In and for the County of Gila

[Stamp—Filed at 4:00 P.M.—June 15, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

Having and Exercising Jurisdiction in Juvenile Matters

Commitment to the State

Industrial School No. 2379

In the Matter of

Gerald Francis Gault

A Delinquent Minor

A Petition having been heretofore filed by Charles D. Flagg, Probation Officer for the County of Gila, State of

Arizona, charging the aforesaid minor with being a delinquent child within the meaning of the Statutes of the State of Arizona applicable thereto;

Now, this 15th day of June, 1964, said matter coming on regularly to be heard before the Judge of the said Superior Court of said County of Gila, in Chambers, and after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.

And the Court finds that the said child's own good and the best interests of the State require that he be committed to the State Industrial School for the period of his minority, unless sooner discharged by due process of law.

A certified copy of this Order shall be a warrant for the Probation Officer of Gila County to deliver the said child to said Industrial School, and for the authorities of said Industrial School to receive and keep said child as herein ordered and provived.

DATED AT GLOBE, ARIZONA, this 15th day of June, 1964.

/s/ ROBERT E. McGHEE
Robert E. McGhee, Judge
Of the Superior Court

[fol. 116]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

En Banc

#164769

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.

Appeal from the Superior Court of Maricopa County

Honorable Fred J. Hyder, Judge.

Affirmed.

Amelia D. Lewis, Phoenix, Attorney for Appellants,

Darrell F. Smith, Attorney General, By Philip M. Haggerty, Assistant Attorney General, Attorney for Appellee.

OPINION—Filed November 10, 1965

BERNSTEIN, Justice

The parents of Gerald Francis Gault appeal from an order entered by the Maricopa County Superior Court dismissing a petition for habeas corpus, discharging the writ and remanding the infant involved to the custody of the appropriate authorities in the Arizona Industrial School. Petitioners filed in this court August 3, 1964 seeking a writ of habeas corpus to secure the release of their minor son who had been committed to the Arizona Industrial School June 15, 1964.

On the same day the petition was filed, we ordered that the matter be heard by the Superior Court of Maricopa County, which hearing was held August 17, 1964. At that [fol. 117] time, the following facts were elicited. On June 8, 1964 Gerald Gault and a companion, Ronald Lewis, telephoned from the Gault house to a Mrs. C. and made ob-

[File endorsement omitted]

scene remarks to her. She reported the incident, the call was traced and the boys picked up. They were taken to the detention home and that same evening Mrs. Gault went there and spoke to Gerald who admitted the episode but, according to her testimony at the habeas corpus hearing, said Ronald used the lewd language. Probation Officer Flagg told her why Gerald was there and said there would be a court hearing the next day. Judge McGhee heard the matter in chambers in the presence of Gerald, Ronald and his father, Mrs. Gault, her elder son Louis, and Probation Officers Flagg and Henderson.

There was a conflict in the testimony at the habeas corpus hearing concerning what transpired at the juvenile hearing. Mrs. Gault testified that in response to the Judge's questions at the juvenile hearing, Gerald said he dialed Mrs. C's number, asked her if it was such and such a number, said there was a friend of his who wanted to talk to her, then handed the phone to Ronald who made the lewd remarks. Officer Flagg testified that at the juvenile hearing, Gerald admitted making the phone call and using some of the obscene language. Judge McGhee testified that Gerald admitted using some lewd words. The Judge further testified that at the conclusion of the juvenile hearing he told Mrs. Gault and Gerald he would think about the case and let them know his disposition of it. Gerald was returned to his home the 12th and on that day or the preceding day Mrs. Gault received a written note from Officer Flagg which said "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964, at 11:00 a.m. as the day and time for further hearings on Gerald's de- [fol. 118] linquency" signed "Flagg".

There was a further conflict in the evidence at the habeas corpus hearing concerning the testimony at the second juvenile hearing. Both Mr. and Mrs. Gault testified that no one accused Gerald of making a lewd telephone call and also said that Gerald admitted nothing. Both Mrs. Gault and Judge McGhee agreed that Mrs. Gault had asked him why Mrs. C. wasn't present to which he replied she didn't

have to be. But Judge McGhee said Gerald admitted making some of the lewd remarks, although not the more serious ones. The Judge also testified that he informed the Gaults at the juvenile hearing of the possible consequences if Gerald was found to be delinquent, namely, commitment. Gerald did not testify at the habeas corpus hearing.

The Gaults were not given a copy of the petition or written notice of the hearing date except for Flagg's note concerning the hearing on the 15th. But it is clear that they knew the exact nature of the alleged act of delinquency, including the name of Mrs. C., from the day Gerald was detained and they appeared at both juvenile hearings without complaint of inadequate time.

The parents claim they were not informed of a right to counsel, to subpoena witnesses, to cross examine witnesses, of the right of confrontation, to sworn testimony and to a warning of the possible consequences of a finding of delinquency. Assuming they have these rights, it appears from the record that they knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against Gerald and the possible consequences of a finding of delinquency. In February [fol. 119] 1964, Judge McGhee found Gerald delinquent on a different charge and informed the parents that if Gerald came before the court again and was found to be delinquent he might be committed.

The assignments of error may be grouped under three major headings: (1) that the Juvenile Code, A.R.S. §8-201 et seq., is unconstitutional because it fails to apprise parents and children of the specific charges, does not require timely, adequate and proper notice of a hearing and does not provide for an appeal, all of which is a deprivation of procedural due process of law; (2) that the juvenile court in fact denied petitioners due process of law by failing to provide proper notice of the charge and the hearing, failing to notify them of certain constitutional rights, by relying upon unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald from

his parents without a showing of their incompetency or inability to properly care for him, and finally, (3) a group of miscellaneous error dealing with the habeas corpus hearing in Maricopa County and the original detention of Gerald.

The parents contend our juvenile code is unconstitutional because it fails to provide for adequate notice of the alleged act of delinquency and fails to provide for proper notice of a juvenile hearing sufficiently in advance to enable the parents and child to decide whether to admit or contest the allegations. It is also argued that the statute is invalid because it does not provide for an appeal procedure. All of these omissions are said to violate procedural due process of law contrary to our state and federal constitutions. U.S. Const. Amendment 14, §1; Arizona Const. Art. 2, §4.

[fol. 120] We first consider petitioners' complaint that the juvenile code does not provide for an appeal. The question was decided adversely to them in Ginn v. Superior Court, in and for County of Pima, —— Ariz. Ap. ——, 404 P.2d 721. We agree with the scholarly opinion of our appellate tribunal and hold that there is no right of appeal from a juvenile court order, nor does the general appeal statute apply, §12-2101 A.R.S.; 404 P.2d at 724. We note that our Constitution gives to the superior court *exclusive original jurisdiction in all proceedings and matters affecting delinquent children,* Article 6, §15.

Section 8-201(6) defines a delinquent child as one who has violated a law, regulation or ordinance; is uncontrolled by his parent because incorrigible, wayward or habitually disobedient; habitually truant from school or home or habitually deports himself so as to injure or endanger the morals or health of himself or others. Section 8-222 provides that the powers of the court may be exercised upon the filing of a petition alleging that the child is delinquent but not the facts upon which the allegation is based. The court may order that a petition be filed if, after a preliminary inquiry, it determines that formal jurisdiction over the child should be acquired. Once jurisdiction at-

taches the court may compel the production of the child and the attendance of the parents or guardian, Section 8-224. This provision makes it clear that the parent or guardian must be notified of the hearing by personal service if practical. The hearing must be held informally in chambers, Const. Art. 6, §15; §8-229, and the judge "shall make such order for the commitment, custody and care of the child as the child's welfare and the interests of the state require", §8-231. Once acquired, the jurisdiction of [fol. 121] the court over the child continues until he is 21 years of age unless sooner discharged, §8-236. An adjudication by the court upon the status of the child shall not impose any civil disability, nor shall the child be deemed a criminal. Moreover, the adjudication is not a conviction and evidence given in the juvenile court is inadmissible in any other court, §8-228. Unless the child is convicted of an offense in the interim, the court must destroy its records 2 years after the termination of probation or discharge from an institution, §8-238.

We approach this challenge to the juvenile code aware of our duty to give to the language of all statutes a meaning that will render them constitutional if this can reasonably be done. State v. Locks, 91 Ariz. 394, 372 P.2d 724. We will not declare a legislative act unconstitutional unless satisfied beyond a reasonable doubt of its invalidity. State Board of Technical Registration v. McDaniel, 84 Ariz. 223, 326 P.2d 348. In short, our duty is to reconcile the language of a statute with the constitutional provisions if possible. Roberts v. Spray, 71 Ariz. 60, 223 P.2d 808. Although the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law, Art. 2, §4, is not expressly implemented in the juvenile code, we have held a statute valid in other situations though we had to imply into the language a necessary element of the problem. In State v. Krug, 96 Ariz. 225, 393 P.2d 916 we held constitutional the "perjury by contradictory statements" statute, §13-562, A.R.S. though it failed to expressly use the word "willfully", a necessary

element of the offense. We said the element was implicit in the statute. Similarly, our constitution guarantees due process of law and the specific implementation of that [fol. 122] concept impliedly exists in the juvenile code. We have held that any statutory provision for a hearing means a hearing in a substantial sense meeting the requirements of due process. State v. Essman —— Ariz. ——, 403 P.2d 540; McGee v. Arizona State Board of Pardons and Paroles, 92 Ariz. 317, 376 P.2d 779; Forman v. Creighton School District No. 14, 87 Ariz. 329, 351 P.2d 165. The problem is ascertaining the particular elements which constitute due process in a juvenile hearing.

All jurisdictions have juvenile codes and all provide for less than the full set of due process guarantees available in a criminal proceeding. Yet, the overwhelming majority of courts have expressly or impliedly recognized the statutes to be constitutional. Harris v. State, 24 Ala.App. 59, 129 So. 795; Ex parte Daedler, 194 Cal. 320, 228 P. 467; Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892; Egoff v. Board of Childrens' Guardians, 170 Ind. 238, 84 N.E. 151; Farnham v. Pierce, 141 Mass. 208, 6 N.E. 830; Mill v. Brown, 31 Utah 473, 88 P. 609; In re Lewis, 51 Wash. 2d 193, 316 P.2d 907. For a compilation of early decisions upholding constitutionality of juvenile statutes and denying that restraint of infants pursuant to juvenile hearings impairs their constitutional rights see 18 L.R.A. (N.S.) 886.

We are aware of the tide of criticism inundating juvenile proceedings. The major complaint deals with the informal, non-adversary procedure for determining delinquency rather than the treatment rendered after a finding of delinquency. On the other hand, juvenile courts do not exist to punish children for their transgressions against society. The juvenile court stands in the position of a protecting parent rather than a prosecutor. It is an effort to substitute protection and guidance for punishment, to with- [fol. 123] draw the child from criminal jurisdiction and use social sciences regarding the study of human behaviour

which permit flexibilities within the procedures. The aim of the court is to provide individualized justice for children. Whatever the formulation, the purpose is to provide authoritative treatment for those who are no longer responding to the normal restraints the child should receive at the hands of his parents. The delinquent is the child of, rather than the enemy of society and their interests coincide. This is the basis for the general rejection of the criminal law adversary proceeding. Generally, see Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis. L.R. pp. 7-12; Paulsen, The Juvenile Court and the whole of the law, 11 Wayne L.R. 597; Molloy, Juvenile Court—A Labyrinth of confusion for the lawyer, 4 Ariz. L.R. 1,5. We have stated that the purpose of our juvenile statute is to redirect and rehabilitate the child. State v. Shaw, 93 Ariz. 40, 378 P.2d 487. Of course, the parents' right of custody is natural and legal. The court should not remove a child from its parents except for the gravest of reasons. The informality referred to in A.R.S. §8-229 merely authorizes the court to disregard technical matters of procedure not affecting the fundamental right to due process of law. Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298.

The conceptual basis for the juvenile code is the parens patriae doctrine where the state acts in loco parentis to the child. However, the Montana Supreme Court has said and we agree that:

> "This court does not wish to permit the parens patriae doctrine to prevent a fair hearing. The parens patriae [fol. 124] doctrine is intended to benefit and protect both juvenile delinquents and the public, but the doctrine cannot serve as justification for illegal detention no matter how labelled." State v. Johnson, 141 Mont. 1, 374 P.2d 504, 506.

Good intentions do not justify depriving a child of due process of law. "Otherwise, all that is necessary to justify a despotism is to make sure it intends to be benevolent." Waite, How Far Can Court Procedure Be Socialized With-

out Impairing Individual Rights, 12 J.Crim.L. & C. 339, 341. Fairness is not inimical to the proper treatment of juveniles. Justice is as good for them as it is for adults.

Those who criticize the juvenile statutes object to the great power of the judge. But that power is necessary to achieve the individualized consideration of the child which is as valid an objective today as it was 60 years ago when the juvenile court movement began. Dean Pound, speaking of family court procedures, said:

> "Instead of being wholly contentious the proceeding in the family court division should be investigatory—directed to determining the best disposition or adjustment of the family situation as a whole and seeking a complete disposition thereof. It may involve contentious trial of certain issues of fact. But the proceeding as a whole should not be primarily and characteristically contentious." Pound, The Place of the Family Court in the Judicial System, 10 Crim. & Del. 532, 542.

At the 1960 UN Seminar on human rights and the criminal law it was agreed that in all its functions, retributive, deterrent, reformative and educative—it was possible for the criminal law to be defined and applied so as to conflict with human rights. Any one of these purposes carried to the extreme could lead to serious and unjustified infringements of human rights. Morris & Howard, Studies in [fol. 125] Criminal Law 157 (64). The point is that the law, juvenile or otherwise, is no better than its administrators. Of course, it is legitimately argued that properly worded statutes decreases the opportunity for less able administrators to prejudice our citizens. In 1961 California adopted a juvenile code which attempts to provide a practical balance between civil due process for the infant and the informal court atmosphere which minimizes the harmful effects of the proceeding and encourages the minor's receptivity to treatment. In re Mikkelsen, 226 C.A.2d 467, 38 Cal. Rptr. 106. Our task is to determine the procedural due process elements to which an infant and his parents are entitled in a juvenile hearing and decide whether our

statute may be construed to include them. Then we must decide whether petitioners and their son were deprived of those rights to their prejudice.

The parent or guardian must be notified of the hearing, and anyone who rights may be affected by the court's determination must be notified, In re Mendevil, 21 Ariz. 586, 193 P. 17 and In re Johnson, 86 Ariz. 297, 345 P.2d 423, and such notice must be given a reasonable time prior to the hearing. Moreover, the child and parent must be informed of the alleged act of delinquency before an adjudication of delinquency is made.

This brings us to petitioners' second assignment of error alleging that the juvenile court, in fact, denied them and Gerald procedural due process of law because of the informal manner in which the hearing was conducted.

The conflict between the legal profession's inculcated traditional due process guarantees and the sociologist's concept of proper treatment for the juvenile delinquent has [fol. 126] understandably created divergent decisions by appellate courts. Many cases have generally held that the full array of criminal procedural safeguards are not required in juvenile proceedings. People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875; People ex rel Weber v. Fifield, 136 Cal.App.2d 741, 289 P.2d 303; Akers v. State, 114 Ind.App. 195, 51 N.E.2d 91; People v. Lewis, 260 N.Y. 171, 183 N.E. 353; In re Holmes, 379 Pa. 599, 109 A.2d 523. But the decisions are in conflict concerning particular procedural safeguards. It has been held that a general allegation of delinquency, without stating the facts supporting the allegation, is a sufficiently definite accusation. In re Bentley, 246 Wis. 69, 16 N.W.2d 390; In re Duncan, 62 Ohio L. Abs. 173, 107 N.E.2d 256. That is the requirement of our statute, A.R.S. §8-222. Other jurisdictions have decided that due process requires more detailed notice. Wheeler v. Shoemake, 213 Miss. 374, 57 So.2d 267. As we said above, the juvenile and his parents or guardian are undoubtedly entitled to know the facts upon which the allegation of delinquency is based. On the other hand, we have held that the policy of the juvenile law is to hide youthful errors from the

full gaze of the public and bury them in the graveyard of the forgotten past. State v. Guerrero, 58 Ariz. 421, 120 P.2d 798. We think the proper balance between the infant's right to know the facts of the charge against him and the state's interest in avoiding or erasing the stigma of delinquency is best struck by the following rule: the infant and his parent or guardian will receive a petition only reciting a conclusion of delinquency. But no later than the initial hearing by the judge, they must be advised of the facts involved in the case. If the charges are denied, they must [fol. 127] be given a reasonable period of time to prepare.

Some courts have held that the infant is not entitled as of right to the appointment of counsel or to be represented. In re Holmes, supra; Akers v. State, supra; People v. Dotson, supra; People ex rel Weber v. Fifield, supra. But other courts have held otherwise. Exparte State ex rel Echols, 245 Ala. 353, 17 So.2d 449; In re Contreras, 109 Cal.Ap.2d 787, 241 P.2d 631; see Cal. Welfare & Inst'ns Code §§500-914; N.Y. Family Court Act §§249, 741. There is disagreement as to whether the court must advise the infant that he has a right to counsel. Some courts say no, Robinson v. State, Tex. Civ. App., 204 S.W. 2d 981, and others say yes. Shioutakon v. District of Columbia, 236 F.2d 666. We have held that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. State Dept. of Public Welfare v. Barlow, supra. But a child has different rights and disabilities. State v. Shaw, supra. Section 8-221 A.R.S. provides that when a police officer arrests a child he must immediately notify a probation officer and make such disposition of the child as the probation officer directs. Section 8-204C (1) A.R.S. states that the probation officer shall look after the interests of neglected, delinquent and dependent children. Paragraph 3 of subsection C requires him to be present in court when cases are heard concerning children and represent their interests. Of course, the juvenile court always has discretion to allow representation. Many times an attorney may be helpful to the court, particularly where he has the confidence of parents and child and understands the seri-

ousness of the hearing. But we do not think due process requires that an infant have a right to counsel. The parent [fol. 128] and the probation officer may be relied upon to protect the infant's interests. If, however, the court discerns any conflict between the parent and child, it has discretion to select an attorney to represent the infant.

Courts have held that the infant does not have a privilege against self-incrimination or a right to be advised of the privilege, In re Santillanes, 47 N.M. 140, 138 P.2d 503; In re Holmes, supra, but the contrary has been held. Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269. We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.

It has been held that the infant has no right to confront the witnesses against him. Cinque v. Boyd, 99 Conn. 70, 121 A. 678; In re Holmes, supra. We think the relevancy of confrontation only arises where the charges are denied.

Some courts have felt obliged to apply the usual rules of evidence when deciding whether the infant committed the alleged act of delinquency, In re Contreras, supra; People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584, including the necessity of sworn testimony, In re Mantell, 157 Neb. 900, 62 N.W.2d 308, and the exclusion of hearsay, In re Green, 123 Ind.App. 81, 108 N.E.2d 647; State v. Freeman, 81 Mont. 132, 262 P. 168. But other courts have held the admissibility of hearsay proper, Campbell v. Siegler, 10 N.J. Misc. 987, 162 A. 154; In re Bentley, 246 Wis. 69, 16 N.W.2d 390, and sworn testimony unnecessary, State v. Christensen, 119 Utah 361, 227 P.2d 760. We think the sounder rule allows the judge to consider hearsay though the hearing is contested, but sworn testimony must be required of all witnesses including police officers, probation [fol. 129] officers and others who are part of or officially related to the juvenile court structure. But the hearsay upon which the judge can rely must be of a kind on which reasonable men are accustomed to rely in serious affairs. Reynolds Metals Co. v. Industrial Commission, 98 Ariz. 97, 402 P.2d 414.

The applicable burden of proof varies from a mere preponderance as in a civil case, State ex rel Berry v. Superior Court, 139 Wash. 1, 245 P. 409, to proof beyond a reasonable doubt, Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444.

A juvenile court proceeding is not a criminal case. It is a proceeding affecting children and concerns the need for some disposition to be made of a child whose welfare in relation to society is seriously involved. It may arise out of dependency, neglect or delinquency. Ariz. Const. Art. 6, §15. The delinquency may or may not involve commission of a crime by the child. The juvenile court may either suspend or refuse to suspend criminal prosecution when a child is accused of committing a crime. If it suspends criminal prosecution and retains jurisdiction, the juvenile court determines whether the child has committed a crime, not for the purpose of finding the child guilty or not guilty, but for the purpose of determining that the child has committed an act of delinquency. Acknowledging the non-criminal nature of the proceeding, yet mindful of the fact that a parent may be deprived of his child and the child of his liberty, we think the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act.

Petitioners complain that no transcript of either juvenile hearing was prepared and the record of the court did not contain findings of fact upon which the conclusion of [fol. 130] delinquency was based. They argue that an intelligent appeal cannot be taken without a complete transcript and record. The purpose of a transcript, in some instances, is to support an appeal. But there is no right to an appeal. Furthermore, the evidence adduced at a juvenile hearing is of a confidential nature because it is inadmissible in other courts, A.R.S. §8-228, and the record must be destroyed after a prescribed period of time, A.R.S. §8-238. We think the juvenile court has discretion to order or deny the taking of a transcript.

Applying all of the above requirements to the hearing under review, we find that petitioners were not denied due process of law. Mrs. Gault knew the exact nature of the

charge against Gerald from the day he was taken to the detention home. She and Gerald appeared at the first hearing without objection. Mr. and Mrs. Gault, together with Gerald, appeared at the second hearing before Judge McGhee without objection. Petitioners knew they could have retained counsel, called witnesses and cross examined Probation Officer Flagg.

Petitioners complain that the judge failed to advise them and Gerald of the possible consequences of a finding of delinquency. We know of no such rule. Nor does the concept of a fair hearing suggest a need for the rule. In any event, the record indicates that petitioners were advised by Judge McGhee in February 1964 when Gerald was found delinquent on another charge that if he came before the court again he might be committed.

Petitioners claim there was insufficient evidence to support a finding of delinquency. We note that the juvenile court had acquired jurisdiction over Gerald in February, [fol. 131] 1964 when Judge McGhee placed him on six months probation. Section 8-236 A.R.S. states that once jurisdiction is acquired it continues until the child is 21 years of age unless sooner discharged. The six month probation period had not terminated when Gerald came before Judge McGhee in June 1964. Therefore, the Judge could have committed Gerald without any further showing of delinquency if he decided Gerald's welfare and the interests of the state so required, A.R.S. §8-231. In any event, at the habeas corpus hearing Judge McGhee testified he found that Gerald violated A.R.S. §13-377, the vulgar or obscene language statute, A.R.S. §8-201-6(a) which states that a violation of the law is delinquency and (d) defining a delinquent as one who habitually deports himself so as to endanger his morals or health. There is substantial evidence in the record to support the finding that Gerald was a delinquent child.

Petitioners contend the juvenile court erred in removing Gerald from their custody upon the single ground that he was delinquent. They argue we establish a rule which would require, in addition to a finding of delinquency, a finding of the parents' unfitness to retain custody before they could be

deprived thereof. We cannot agree. We emphasize the fact that the child's welfare is the primary consideration before the juvenile court and the judge will make such order as the child's welfare and the interests of the state require. It is apparent that the best interest of a child and the fitness of his parent are not necessarily inter-dependent. In State v. Christensen, 119 Utah 361, 227 P.2d 760, the court quoted from an earlier decision where it said:

> [fol. 132] " 'It may well be that parents are generally fit to have the custody of their children, and yet they may be unable to prevent one or more of their children from committing acts of delinquency . . . In such case the juvenile court may commit such juvenile to the industrial school when the best interests of the juvenile or the protection of society demand such commitment.' " 227 P.2d at 762.

Other recent cases which hold that the juvenile court may commit a delinquent child without first deciding the unfitness of the parents are State v. Johnson, supra, and Spangler v. Breashears, Tex.Civ.Ap. 359 S.W.2d 206.

Petitioners claim the infant was unlawfully arrested and detained because A.R.S. §13-1403 allows arrest for a misdemeanor without first obtaining a warrant only if it is committed in the presence of the officer. The arrest must be made immediately or on fresh pursuit. The general law of arrest is usually held to be inapplicable in juvenile proceedings. State v. Freeman, supra; Mill v. Brown, supra; Lindsay v. Lindsay, supra; Wheeler v. Shoemake, supra. Furthermore, A.R.S. §8-221 provides the procedure for arrest of a child. It states that a police officer shall forthwith notify the probation officer upon arresting a child and shall make such disposition of the child as the probation officer directs, State v. Shaw, supra. The article also states that this "shall not be construed to prohibit a peace officer from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken."

[fol. 133] Petitioners' other assignments of error deal with rulings by the court during the habeas corpus hearing. They complain that the cross examination of Judge McGhee was improperly restricted. They also contend there was insufficient evidence to support the conclusion of the legality of Gerald's detention. We have considered these assignments and find them to be without merit.

The order of the Maricopa County Superior Court is in all respects affirmed.

Charles C. Bernstein, Justice

CONCURRING:

Lorna E. Lockwood, Chief Justice
Fred C. Struckmeyer, Jr., Vice Chief Justice
Jesse A. Udall, Justice
Ernest W. McFarland, Justice

[fol. 134]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

To the Honorable the Superior Court of the State of Arizona in and for the County of Maricopa.

[Stamp—Robert E. Miller—Filed—Clerk—Deputy Beulah Lowe—1965—Dec. 27—AM 8:28]

Greeting:

Whereas, lately in the Superior Court of the State of Arizona in and for the County of Maricopa, before you in a cause between

CAUSE No. 164769

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus,

said Superior Court on the 17th day of August, 1964, entered the following Order:

"It is ordered, adjudged and decreed that the petition be dismissed and the Writ discharged and that Gerald Francis Gault be remanded to the custody of the respondent."

[fol. 135] as by the inspection of the record of the said Superior Court, which was brought into the Supreme Court of the State of Arizona by virtue of an appeal by petitioners agreeably to the law in such case made and provided fully and at large appears.

[fol. 136] And Whereas, in July, in the year of our Lord one thousand nine hundred and sixty-five, the said cause came on to be heard before the said Supreme Court, and was submitted for decision after argument of counsel.

On Consideration Whereof, it was on the tenth day of November in the year of our Lord one thousand nine hundred and sixty-five, ordered by this Court that the judgment of the said Superior Court in this cause, appealed from be, and the same is hereby affirmed.

[fol. 137] You therefore are hereby commanded that such proceedings be had in said cause, as according to the decision and order of this Court, and as according to right and justice, and to law, ought to be had.

Witness, the Honorable Lorna E. Lockwood, Chief Justice of the Supreme Court of the State of Arizona, the sixteenth day of December, in the year of our Lord one thousand nine hundred and sixty-five.

Sylvia Hawkinson, Clerk of the Supreme Court of the State of Arizona.

[fol. 138]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

PHOENIX

No. 8549

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.

The following action was taken by the Supreme Court of the State of Arizona on December 14, 1965, in regard to the above-entitled cause:

"ORDER: APPELLANT'S MOTION FOR REHEARING—DENIED."—
December 14, 1965

Sylvia Hawkinson, Clerk, By L. Brooks, Assistant Clerk.

To—

Amelia D. Lewis, P.O. Box 370, Sun City, Arizona.

Darrell F. Smith, Attorney General, Capitol Building, Phoenix, Arizona.

[fol. 139]

SUPREME COURT OF THE STATE OF ARIZONA

No. 8549

[Title omitted]

NOTICE OF APPEAL—Filed February 4, 1966

A.

Paul A. Gault and Marjorie Gault, petitioners in the within proceeding for a writ of habeas corpus, hereby appeal from the judgment of the Supreme Court of the State of Arizona in this proceeding, entered November 12, 1965, which declared valid the Juvenile Code of the State of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, and affirmed the order of the Superior Court of Maricopa County, dated August 17, 1964, which court, having been designated by this Court to hear and take testimony on the habeas corpus application, denied the writ.

Petitioner's motion for rehearing of this matter was denied December 16, 1965.

B.

It is requested that all of the records be certified by this Court to the United States Supreme Court.

C.

The questions presented by this appeal are as follows:

(1) Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, violates the Four-
[fol. 140] teenth Amendment to the United States Constitution, on its face, or as construed and applied in this case, so that petitioners, parents of a juvenile committed as a delinquent for the period of his minority, are deprived of

[File endorsement omitted].

the custody of their child by a commitment proceeding which

a) did not provide a due, timely, adequate, or proper notice of either the hearing or the charges;

b) did not advise the parents and child of their right to counsel;

c) did not advise the parents and their child of their right to call and subpoena witnesses, their right to confrontation and cross-examination or their right to testimony under oath;

d) did not advise the parents and their child of the penalties attaching to a finding of delinquency;

e) did not advise the parents and their child of their right to the privilege against self-incrimination;

f) relied on hearsay evidence in support of the finding of delinquency;

g) did not provide for findings of fact by the court;

h) did not apprise the parents of the information in the probation file on which the juvenile court relied in finding the child a delinquent;

i) did not provide for a record of the proceedings;

j) did not provide for review by appeal;

k) did not provide for an investigation of the home and other related conditions in order to decide whether [fol. 141] the parents were in fact capable of properly looking after their child who was charged only with a minor violation of the law;

l) allowed the sheriff's office to remove the child from his home without a warrant on the basis of a complaint of a misdemeanor not committed in the arresting officer's presence;

m) was devoid of any evidence that the child was a delinquent.

2) Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, on its face or as construed and applied, violated the due process clause of the Fourteenth Amendment and the constitutionally guaranteed right to privacy, by allowing the petitioners to be deprived of the custody of their child for the period of his minority in the circumstances of this case.

Dated, February 4th, 1966.

Amelia D. Lewis, Attorney for Petitioners, Post Office Box 370, Sun City, Arizona, 85351.

Acknowledgment of Service (omitted in printing).

[fol. 142] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 144]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 8949

In the Matter of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor, for a Writ of Habeas Corpus.

STIPULATION TO ENLARGE TIME FOR FILING AND APPROVAL THEREOF—March 21, 1966

It Is Hereby Stipulated by the attorneys hereto that the time for appellant to file the jurisdictional statement in the Supreme Court of the United States be enlarged which shall include the time for appellant to docket this cause in the Supreme Court of the United States to and including the 5th day of May, 1966, which is thirty days beyond the

[File endorsement omitted]

sixty day period for docketing under Rule 13 of the Rules of the Supreme Court of the United States.

Dated, March 21, 1966.

Amelia D. Lewis, Attorney for Appellants;
Attorney General of the State of Arizona, By Frank A. Parks.

Be It So Ordered, this 21st day of March, 1966.

Fred C. Struckmeyer, Jr., Chief Justice of the Supreme Court of Arizona.

[fol. 145] Triple Certificate to foregoing paper (omitted in printing).

[fol. 147]

SUPREME COURT OF THE UNITED STATES

No. 1273, October Term, 1965

In the matter of the application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor, Appellants.

Appeal from the Supreme Court of the State of Arizona

ORDER NOTING PROBABLE JURISDICTION—June 20, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.